

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

STUDENTS FOR FAIR ADMISSIONS,	) Trial Day 8
	)
Plaintiff,	)
	) Civil No.
vs.	) 1:23-cv-2699-RDB
	)
THE UNITED STATES NAVAL	) Baltimore, Maryland
ACADEMY, ET AL.,	)
	) September 25, 2024
Defendants.	) 11:05 a.m.
	)

TRIAL IN THE ABOVE-ENTITLED MATTER CONTINUED  
BEFORE THE HONORABLE RICHARD D. BENNETT

A P P E A R A N C E S

On Behalf of the Plaintiff:

ADAM K. MORTARA, ESQUIRE  
PATRICK STRAWBRIDGE, ESQUIRE  
J. MICHAEL CONNOLLY, ESQUIRE  
CAMERON T. NORRIS, ESQUIRE  
JAMES HASSON, ESQUIRE  
R. GABRIEL ANDERSON, ESQUIRE  
THOMAS R. MCCARTHY, ESQUIRE  
RACHAEL WYRICK, ESQUIRE

On Behalf of the Defendant:

JOSHUA E. GARDNER, ESQUIRE  
CATHERINE M. YANG, ESQUIRE  
ANDREW E. CARMICHAEL, ESQUIRE  
JOHN ROBINSON, ESQUIRE  
MEDHA GARGEYA, ESQUIRE  
CHRIS E. MENDEZ, ESQUIRE

Also Present:

EDWARD BLUM, STUDENT FOR FAIR ADMISSIONS  
BRUCE LATTA, NAVAL ACADEMY  
TRACEY URBAN, PARALEGAL  
LINDSEY O'CONNOR, PARALEGAL  
MICHEAL PUSTERLA, IT  
BRIAN SIMMONS, IT

REPORTED BY:

Ronda J. Thomas, RMR, CRR

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1 (11:05 a.m.)

2 **THE COURT:** Good morning, everyone. You all may be  
3 seated.

4 I want to apologize for the late start. I had it on  
5 really high intelligence this morning that we were going to  
6 have a fire drill, and then my key intelligence officer here at  
7 the court -- we're laughing -- then advised me later that  
8 apparently she was ill advised.

9 So Ms. Herndon, who's really good about these things, her  
10 application for the CIA has been withdrawn based upon her lack  
11 of intelligence. But I've gathered on good authority that we  
12 do not have a fire drill today. But I was trying to avoid --

13 **THE CLERK:** I didn't say that.

14 **THE COURT:** Well, I think you said that.

15 I'm just trying to make sure -- I was trying to make sure  
16 we didn't have to rush out of here at 10:00 and stand out in  
17 the rain. So I just said we'll just start at 11:00, with not  
18 indicating that there had been a breach in the security. And  
19 apparently there had not been a breach in security; I had bad  
20 intel, as they say, which you all understand.

21 The second matter is is that today is the birthday of my  
22 court reporter, Ronda Thomas.

23 (Applause.)

24 So we have a card here for you, Ronda. Turn around here,  
25 dear. There's a card for you. Happy birthday.

1 And I'll just note that in the card I've indicated to  
2 Ms. Thomas that, if she hadn't worked for me, she'd be five  
3 years younger than she is today.

4 So, with that, we're ready to continue with the next  
5 witness for the defense.

6 Yes?

7 **MS. GARGEYA:** Good morning, Your Honor.

8 **THE COURT:** Good morning, Ms. Yang. Nice to see  
9 you -- I mean, Ms. Gargeya, nice to see you. We're ready to  
10 start?

11 **MS. GARGEYA:** Yes, sir. Defendants will next call  
12 Captain Ed Sundberg.

13 **THE COURT:** Yes. Thank you very much.

14 **THE CLERK:** Would you please raise your right hand.

15 (Witness sworn.)

16 **THE CLERK:** Please state and spell your first and last  
17 name for the record.

18 **THE WITNESS:** Edward Sundberg, E-D-W-A-R-D,  
19 S-U-N-D-B-E-R-G.

20 **THE CLERK:** Thank you.

21 **THE COURT:** Thank you.

22 Ms. Gargeya, am I pronouncing your name correctly?

23 You may begin. Thank you.

24 **MS. GARGEYA:** Thank you, sir.

25 **DIRECT EXAMINATION**

1 BY MS. GARGEYA:

2 Q. Good morning, Captain Sundberg.

3 A. Good morning.

4 Q. Where do you work?

5 A. And U.S. Naval Academy.

6 Q. And what is your position, sir?

7 A. I am the deputy commandant for professional development.

8 Q. When did you become the deputy commandant for professional  
9 development?

10 A. About four months ago.

11 Q. So May of 2024?

12 A. Yes.

13 Q. You've been at the Naval Academy before, right, sir?

14 A. I have, as a midshipman.

15 Q. When did you graduate?

16 A. 1997.

17 Q. And what did you study at the Academy?

18 A. Political science.

19 Q. Have you earned any other degrees?

20 A. I have. I've earned a master of arts in national security  
21 affairs from the Naval Postgraduate School.

22 Q. How many years have you been on active duty, sir?

23 A. Over 27 years.

24 Q. I see you're an 06, a captain?

25 A. Yes.

1 Q. And you're in the surface warfare community?

2 A. I am.

3 Q. Have you been deployed, sir?

4 A. Yes, numerous times, probably over 10 different  
5 deployments.

6 Q. At a general level, could you describe your career in the  
7 Navy?

8 A. I've been on five different ships, mainly destroyers and a  
9 cruiser, deployed to the East Coast, West Coast, overseas east  
10 coast, west coast, yeah, all over the world.

11 Q. Turning to your present tour at the Naval Academy, sir,  
12 are you involved at all in admissions?

13 A. No.

14 Q. As deputy commandant for professional development, do you  
15 feel bound to follow the directives of the Department of  
16 Defense?

17 A. I do.

18 Q. And you're in the chain of command, sir?

19 A. I am.

20 Q. Who do you report to?

21 A. The commandant of midshipmen.

22 Q. And who does the commandant of midshipmen report to?

23 A. The superintendent.

24 Q. Who reports to you?

25 A. So I have five departments that work for me. I have the

1 officer accessions talent optimization. I have sailing. I  
2 have waterfront readiness. I have training in seamanship and  
3 navigation.

4 Q. What does the department of officer accessions and talent  
5 optimization do?

6 A. Essentially, they execute the service assignment process.

7 Q. This morning, at a high level, we're going to walk through  
8 the midshipmen service assignment process.

9 First, pretty fundamentally, what is the service  
10 assignment process?

11 A. Essentially, it assigns midshipmen into the communities of  
12 the Navy and Marine Corps upon graduation.

13 Q. Does race play any role in the service assignment process?

14 A. No.

15 Q. When does the service assignment process happen?

16 A. It roughly starts at the end of August of a first-class  
17 midshipman's year there. And they're notified at the end of  
18 November.

19 Q. Captain Sundberg, you have a binder in front of you. And  
20 we'll put this on the screen too. I'm going to refer you to  
21 DX157 that's previously been admitted.

22 Do you recognize this document, sir?

23 A. I do.

24 Q. What is it?

25 A. It's the service assignment instruction.

1 Q. Who wrote this instruction?

2 A. I'm not sure who wrote it. It was written in 2021. I  
3 wasn't there.

4 Q. Who is responsible for the midshipmen service assignment  
5 process?

6 A. I am through my officer accession talent optimization  
7 department.

8 Q. Outside of this instruction, sir, do you rely on anything  
9 else to guide midshipmen service assignment?

10 A. I do. We get some guidance and directives from the chief  
11 of naval personnel. That -- yeah.

12 Q. And could you provide examples of those goals and  
13 requirements from the chief of naval personnel?

14 A. Some of those things. They list out some general  
15 requirements that each of the communities have, from degree of  
16 requirements to physical requirements. It also lists for us  
17 the directive that greater than 95 percent of the midshipmen  
18 need to commission into the warfighting communities.

19 Q. Thank you, sir.

20 Broadly, what factors go into the midshipmen service  
21 assignment process?

22 A. So there are three main factors that go into it.

23 One are the midshipmen preferences.

24 The second one is, like, needs of the Navy. So think  
25 about the numbers of billets we have to fill for each of those



1 communities come down to us.

2 And then the third and last one are the midshipmen  
3 aptitude and performance.

4 Q. Captain Sundberg, of those three areas, what is the most  
5 important?

6 A. There really isn't one that's most important. I will say  
7 that the needs of the Navy and the midshipmen performance drive  
8 the process. However, we honor midshipman preference as often  
9 as possible.

10 Q. Okay.

11 Brian, are you able -- perfect. Thank you.

12 Is this what you're referring to, sir, that midshipmen  
13 qualification, the needs of the Navy and Marine Corps drive the  
14 service assignment process; however, midshipmen preferences are  
15 honored as often as possible?

16 A. Yes.

17 Q. Why is midshipmen preference honored as much as possible?

18 A. I don't know for sure. Like I said, I didn't create this  
19 policy. But I would like to think that, if somebody gets  
20 assigned a community that they are choosing and want to, that  
21 they're going to perform better, they're going to have a better  
22 attitude, and they'll be more successful in that community.

23 Q. How many communities can a midshipman preference, sir?

24 A. They can put six preferences in. A couple of those  
25 communities are first-choice preference only. But preferences

1 two through six need to be of the warfighting communities  
2 because that gets after the direction that greater than  
3 95 percent of the midshipmen need to be assigned to warfare  
4 communities.

5 Q. What percentage of midshipmen get their first-choice  
6 preference, sir?

7 A. Roughly about 83, 84 percent.

8 Q. And what percentage of midshipmen get their first- or  
9 second-choice preference?

10 A. About 94 percent.

11 Q. Okay. So once midshipmen rank their preferences, what  
12 happens?

13 A. So they rank their preferences. My officer accession  
14 department allocates those midshipmen to the various  
15 communities based on those first-choice preferences. Those  
16 communities stand up a community assignment board where they  
17 evaluate those midshipmen that are desired in their community.  
18 They run through their criteria that they have for their  
19 communities, and they usually rank those midshipmen 1 through X  
20 to determine which ones they would like to tentatively select.

21 Q. And X being the number allotted to that community?

22 A. Correct, or the number of midshipmen that are actually  
23 desiring that community. But sometimes those numbers don't  
24 match. Sometimes there's some communities -- there's more  
25 midshipmen that want the community than we have slots

1 available, and so then those communities will have to basically  
2 make cuts. And those midshipmen then end up getting moved to a  
3 different community based on their preference.

4 Q. Captain Sundberg, you mentioned community assignment  
5 boards. Who comprises those communities?

6 A. Basically, members of those communities that are stationed  
7 at the U.S. Naval Academy. Some of the communities do have --  
8 they bring in folks from the outside at part of those  
9 communities to evaluate the midshipmen.

10 Q. Sir, let's discuss what community assignment boards  
11 consider when they rank midshipmen.

12 Sir, do you mind reading out the highlighted sentences.

13 A. "Each community determines the attributes they deem  
14 necessary for projected success in the assigned warfare  
15 specialty and how those attributes are evaluated, such as  
16 summer training evaluations, extracurricular activity, ECA  
17 participation, screener performance, and order of merit. Order  
18 of merit is only one of many factors considered in determining  
19 the best-qualified midshipmen."

20 Q. Thank you, sir.

21 So each community determines the attributes they deem  
22 necessary for projected success in that specialty and how those  
23 attributes are evaluated, right?

24 A. Correct.

25 Q. What is summer training?

1 A. Summer training is -- we send the midshipmen out to the  
2 fleet and -- primarily to give them exposure and experience  
3 into those communities that they could potentially choose to be  
4 assigned to upon graduation.

5 Q. And so communities can decide how they want to rank  
6 midshipmen based on the evaluations from those training  
7 programs?

8 A. Correct.

9 Q. And communities can consider extracurricular  
10 participation?

11 A. They can.

12 Q. What extracurriculars can they consider?

13 A. There's a ton of extracurricular activities that the  
14 midshipmen can belong to, but I'll just give you an example of  
15 one.

16 There's a Surface Navy Association extracurricular  
17 activity that has some affiliation with the surface community  
18 and does surface warfare-related-type stuff.

19 Q. Thank you, sir.

20 And so they can consider extracurricular participation as  
21 well?

22 A. Correct.

23 Q. What is screener performance?

24 A. Screener performance can mean a couple things depending on  
25 the community. Some of them have some security clearance

1 screening requirements, and others have physical fitness  
2 requirements that those communities have that they screen for.

3 Q. And communities can consider performance on those screener  
4 requirements too?

5 A. Correct.

6 Q. And communities can also consider order of merit?

7 A. They can.

8 Q. Each community weighs these factors differently, sir?

9 A. As far as I know, yes.

10 Q. And order of merit is one of many factors in determining  
11 the best-qualified midshipmen, sir?

12 A. Yes.

13 Q. Sir, do you know how order of merit is calculated?

14 A. I do not.

15 Q. Have you had to weigh any midshipmen's order of merit for  
16 this year's process yet?

17 A. I have not.

18 Q. What do community assignment boards do with all these  
19 factors?

20 A. They put them all together. They, like I said, rank the  
21 midshipmen based on their community's requirements and -- to  
22 tentatively select the best-qualified midshipmen for their  
23 community.

24 Q. Thank you, sir.

25 Now, once communities rank the midshipmen, what happens?

1 A. So the communities will rank the midshipmen depending on  
2 what the community has to fill as far as the requirements of  
3 the Navy gives them to fill versus the numbers of midshipmen  
4 that are qualified and put that community down as a preference.

5 Some communities have more midshipmen that want them than  
6 others, and other communities have less. And so the  
7 communities will make their choices up to the number that  
8 they're required to. Those other midshipmen that are not  
9 selected, my officer accession department reallocates them to  
10 their next community of choice. And then those midshipmen  
11 basically go through that similar process with their new  
12 community to see how they fare, how they rank in that  
13 community. And that process is iterative until all the goals  
14 are met.

15 Q. Sir, is there a body that helps with ensuring that those  
16 goals are met?

17 A. Yes. So after the community assignment boards do their  
18 rankings, then there's a service assignment review board that  
19 is convened that monitors that process between the communities  
20 to ensure that all the goals are met based on OPNAV directive.

21 Q. OPNAV being?

22 A. The operational Navy staff. Sorry.

23 Q. Oh, no problem, sir.

24 So who makes up the service assignment review board?

25 A. It's comprised of five voting members, myself as the

1 chairman; and then the leads of the four major communities, if  
2 you will, the Marine Corps, the surface warfare community,  
3 aviation, and submarine communities.

4 Q. And how does the service assignment review board  
5 redistribute midshipmen?

6 A. I would theoretically, because I'm not sure; I haven't  
7 done this part of the process yet. But how it's supposed to  
8 happen is they're supposed to monitor that distribution between  
9 the communities, that they're done in an appropriate manner.  
10 And at the end, if there's any hard spots that need to be  
11 filled, that they're done accordingly.

12 Q. Thank you, sir. Do either the community assignment boards  
13 or the service assignment review board consider race?

14 A. No.

15 Q. So once all midshipmen have been distributed and the  
16 numbers have been met from OPNAV, what happens?

17 A. The SARB makes a recommendation up to the commandant for  
18 endorsement on those assignments, and then that gets forwarded  
19 up to the superintendent for final approval.

20 Q. The SARB being the service assignment review board?

21 A. Yes.

22 Q. And, generally, midshipmen should know their community  
23 assignment by November?

24 A. Correct.

25 Q. We talked about how order of merit is one of many factors

1 that communities consider when ranking midshipmen. Does order  
2 of merit play a role after midshipmen are notified of their  
3 service assignment?

4 A. It does.

5 Q. What is that role?

6 A. It can play into assignment of school dates, say, flight  
7 school, nuclear power school, or even ship selection. It's the  
8 primary means for doing -- not the only one but the primary one  
9 for doing those type of assignments.

10 Q. This is what you're referring to, sir?

11 A. Yes.

12 Q. Do you know why order of merit is the primary but not  
13 singular measure for purposes of follow-on requirements?

14 A. I don't.

15 Q. And, to your knowledge, order of merit is not considered  
16 after these follow-on requirements, right?

17 A. Correct.

18 MS. GARGEYA: No further questions at this time, Your  
19 Honor.

20 THE COURT: Thank you very much, Ms. Gargeya.

21 With that, cross-examination, Ms. Wyrick.

22 CROSS-EXAMINATION

23 BY MS. WYRICK:

24 Q. Hi Captain Sundberg. I'm Rachael Wyrick. I represent  
25 Students for Fair Admissions.



1 We've not met before, correct?

2 A. Correct.

3 Q. You attended the Naval Academy, correct?

4 A. Correct.

5 Q. And the Naval Postgraduate School for your masters?

6 A. Yes.

7 Q. All right. And you were assigned surface warfare out of  
8 the Academy; is that correct?

9 A. Correct.

10 Q. And since then you've been to Millington, Tennessee,  
11 twice?

12 A. Correct.

13 Q. And you've been to Rhode Island once or twice?

14 A. Yes.

15 Q. Been a lot of different places.

16 You've been to Japan twice; is that right?

17 A. Correct.

18 Q. And some other places in between.

19 Just out of curiosity, did you choose any of those duty  
20 stations, or were you ordered there?

21 A. I guess it's both.

22 Q. And you entered this role in May; is that correct?

23 A. Correct.

24 Q. So this is your first round of really seeing this matching  
25 process work out?

1 A. Correct. Yeah, it's just getting started.

2 Q. Right. You're here to discuss the service selection  
3 process from the Naval Academy to various Navy and Marine Corps  
4 communities. Is that an accurate description?

5 A. It is.

6 Q. Your job is to help match midshipmen and their strengths  
7 and preferences with the needs of the Navy and Marines. Do I  
8 have that right?

9 A. Correct.

10 Q. Would you describe it any other way?

11 A. No.

12 Q. And you've done placements or assignments like this  
13 before; is that correct?

14 A. Yes.

15 Q. Similar?

16 A. Similar based on the three things that we use for the  
17 process, yes.

18 Q. You've been at Navy Personnel Command out of Memphis  
19 twice?

20 A. Correct.

21 Q. So I want to make sure I understand a few things. I don't  
22 want to go back through everything that we've just seen, but  
23 there are a few things I have some questions about and I'd like  
24 your help clarifying.

25 If we can pull up DX157 that's already in evidence. It's

1 also PX309.

2 So I just want to go over this at a very high level. We  
3 can use this document, but I really just want some clarity from  
4 you.

5 I think I understand, but can we go to the community  
6 service and screening section on page 2.

7 That will be 5(a)(2) at the bottom of the page. It says,  
8 "Some Navy and Marine Corps communities have additional  
9 documented screening requirements"; is that right?

10 A. Correct.

11 Q. Who conducts those community service screenings? Is that  
12 the same thing as the CAB?

13 A. The CAB? The CAB, the community assignment board,  
14 doesn't -- the board itself does not conduct those screenings.  
15 Those screenings are done ahead of time with the communities.

16 Q. Okay. Perfect. So that's before the CAB review?

17 A. Correct.

18 Q. All right. How many members -- I just want to make sure I  
19 get this right. How many members are on each CAB?

20 A. That depends. It's up to the community to decide.

21 Q. Do you know if there's an average range or number?

22 A. I don't.

23 Q. You're not aware?

24 All right. And how many CABs are there?

25 A. I don't have an exact number. I would like to say that

1 every community has one, but I don't think that's the case.

2 Q. And so is it -- the community service screenings is for  
3 academic, physical, and professional aptitude; is that right?

4 A. Restate the question, please.

5 Q. I think it's 5(a) on page 2. It says, "Midshipmen  
6 Screening." It's for medical and community-specific screening  
7 for academic, physical, and professional aptitude.

8 So is that what happens prior to the CAB review by members  
9 of the different communities?

10 A. Yes. The -- there are some qualifications that are  
11 required that each of the communities have. Sometimes those  
12 midshipmen don't meet those qualifications, and so they're not  
13 allowed to choose those particular communities.

14 So, as an example, if they're not physically qualified,  
15 they're not able to choose certain communities.

16 Q. And this screen evaluates candidates merely on a pass/fail  
17 basis; is that right?

18 A. I can't say that for sure for all of them, that they're  
19 pass/fail, because I know some of the screenings are numerical.  
20 So there could be a range. But, again, I don't know all the  
21 communities' requirements.

22 Q. Is this screen to evaluate a candidate against those  
23 additional minimum qualifications you just described?

24 A. They're the same qualifications that are listed there that  
25 the community assignment boards evaluate, the ones that we

1 listed before from all of those different activities to  
2 screening requirements to physical and medical requirements.

3 Q. Okay. Let's take a look at some of them, then.

4 For example, on page 3, the second full paragraph. For  
5 midshipmen who desire a Marine Corps assignment, they must  
6 complete leatherneck training; is that right?

7 A. Correct.

8 Q. And that's an example of something that these screens  
9 would evaluate?

10 A. Correct.

11 Q. Great. In the next paragraph, for midshipmen who desire a  
12 Navy or Marine aviation assignment, they must attain qualifying  
13 scores on the aviation selection test battery.

14 Do you see that?

15 A. I do.

16 Q. And that's another example of what these community  
17 screening panels might evaluate?

18 A. Correct.

19 Q. Great.

20 And for those interested in submarine and nuclear warfare,  
21 a selection panel screens academic, athletic, and performance  
22 records; is that correct?

23 A. Correct.

24 Q. And under (e), midshipmen interested in SEALs must meet  
25 physical and medical requirements of a Naval special warfare

1 officer candidate; is that accurate?

2 A. It is.

3 Q. And they must participate in and complete one of the SEAL  
4 screeners; is that right?

5 A. Correct.

6 Q. And do you know what those SEAL screeners entail?

7 A. Not specifically, no.

8 Q. It also says that they must complete SEAL officer  
9 assessment and selection; is that accurate?

10 A. Correct.

11 Q. And moving on, for those interested in an explosive  
12 ordinance device assignment, they must meet all physical and  
13 medical requirements of an EOD officer; is that right?

14 A. It is.

15 Q. And they must complete an EOD screen; is that accurate?

16 A. (No audible answer.)

17 Q. The instructions refer to an EOD accessions board on  
18 page 4. And am I correct in my understanding that that is  
19 different than a community assignment board?

20 A. Can you show me the paragraph.

21 Q. Yes. It is on page 4, paragraph 4.

22 Is that the same thing as what some of these community  
23 screenings would do and that happens before the CAB review?

24 A. It's the same thing, that I'm aware of.

25 Q. Great. Thank you.

1 So you would agree that these assignments I just went  
2 through are examples of communities that have additional  
3 minimum qualifications; is that correct?

4 A. Correct.

5 Q. So what happens after these selection panels do their  
6 work? Is that when it next moves to the community assignment  
7 boards?

8 A. It depends on the community, but some of these panels are  
9 the same thing as the community assignment boards.

10 Q. So if it's the same thing or if it's moved on to a  
11 different CAB, that's where the hard ranking of the midshipmen  
12 occurs; is that right?

13 A. Or the panels. The panels, community assignment board,  
14 some of the communities use those terms synonymously. And  
15 they've already ranked those midshipmen, and they've produced  
16 some tentative selections of which they would like to do based  
17 on the numbers that they have to fill.

18 Q. And let's say it goes to the CABs. Let's say that the  
19 screening panel is different than the CAB for a specific  
20 community. That is where -- or when CABs would start ranking  
21 midshipmen. And the ranking determines follow-on requirements,  
22 like ship assignment, flight school, or nuclear power school  
23 dates; is that right? That's on page 3 in paragraph A.

24 A. That's not correct.

25 Q. That's not correct. Can you explain to me?

1 A. Those community assignment boards, if they are separate  
2 from a panel, then that means the panel probably didn't rank  
3 them; and so then the community assignment boards would rank  
4 those midshipmen to fill the numbers that they have.

5 But the school dates and follow-on assignment dates happen  
6 after the midshipmen have already been assigned a community and  
7 approved by the superintendent.

8 Q. All right. But that -- am I correct that that is where  
9 the order of merit really comes into play, is for those  
10 follow-on?

11 A. Depends on how you're using the term "really comes into  
12 play," like "really." I would say it's used in the process.  
13 As I said before, it's one of the factors before, and it's the  
14 primary factor after notification is complete with determining  
15 school dates and ship assignments.

16 Q. Primary but not singular measure for this purpose is  
17 what --

18 A. For this purpose, follow-on notification, yeah.

19 Q. I'd like to now talk about where folks tend to go when  
20 we're looking at these assignments. If we can look at what's  
21 been marked as Plaintiff's Exhibit 610, which is already in  
22 evidence.

23 This is a document entitled "USNA Class Years 2014 to  
24 2024." It was prepared by internal research at the Naval  
25 Academy and reports class year by service assignment and by



1 race/ethnic group.

2 So please go ahead and take a look. At the bottom left  
3 corner it says the source is MIDS, which is the Midshipmen  
4 Information System; is that right?

5 A. Yes. I don't know what MIDS stands for, but...

6 Q. That's the same system where midshipmen designate their  
7 six preferred service assignments. Do you agree?

8 A. Correct.

9 Q. So this is data your office uses to effectuate placements  
10 at some point; is that right?

11 A. That's not correct.

12 Q. It's not correct. Could you tell me what they use that  
13 information for?

14 A. I don't at all. My office doesn't either.

15 Q. Okay. Back on 309, page 4, paragraph B, it refers to  
16 midshipmen designating their preferred service assignments in  
17 MIDS. That is accurate?

18 A. That's correct.

19 Q. But you don't know where that information goes after its  
20 entered into MIDS?

21 A. Which information are you referring to?

22 Q. The midshipmen preference entry.

23 A. It stays in MIDS. The midshipmen preference entry stays  
24 in MIDS.

25 Q. All right. Let's go back to 610, please. The first page

1 reflects data for 2014; is that correct?

2 A. Yes.

3 Q. Let's flip to the back page. It's page 11. And take a  
4 look at the 2024 data for some of those assignments we  
5 discussed earlier.

6 You'll see special operations EOD. No African Americans  
7 went to special operations in 2024; is that correct?

8 A. If you're telling me, sure. I wasn't here, so...

9 Q. And no -- let's look at special warfare SEALs. No African  
10 Americans went to the SEALs in 2024; is that correct? Can you  
11 see that on the screen?

12 A. It's blank; so the assumption is it's zero, but I don't  
13 know, like I said.

14 Q. Yes, sir. And submarine nuclear, last one, four African  
15 Americans went to submarines in 2024; is that right?

16 MS. GARGEYA: Your Honor, I'm going to object on  
17 foundation. Captain Sundberg wasn't here for this service  
18 assignment cycle. This is from 2024. He joined the Naval  
19 Academy around May 24th of this year.

20 THE COURT: Well, I understand. We can go through  
21 this a little bit. I mean, if he has only limited knowledge of  
22 it, we don't just need to go through a document and have the  
23 counsel just cite what the document states.

24 So I'll let it go a little further, but you've got to lay  
25 a little more foundation. If he's not really part of the

1 creation of this document, Ms. Wyrick. It's in evidence.

2 **MS. WYRICK:** Your Honor, I'm finished using it at this  
3 point.

4 **THE COURT:** That's fine. That's fine. The objection  
5 is noted. Thank you. It's withdrawn, then. Objection's  
6 withdrawn.

7 **BY MS. WYRICK:**

8 **Q.** Captain Sundberg, are you familiar with the type of data  
9 or the types of historical placements of midshipmen at  
10 different assignments?

11 **A.** No.

12 **Q.** You're not. So you don't know whether special  
13 operations -- based on what you've just seen, could you tell me  
14 that special operations is one of the least diverse selection  
15 assignments?

16 **MS. GARGEYA:** Your Honor, objection.

17 **THE COURT:** Sustained. He doesn't have any basis for  
18 the knowledge. That's clearly argument counsel can make. It's  
19 inappropriate question, and it's sustained. Objection is  
20 sustained.

21 **MS. WYRICK:** Yes, Your Honor. No further questions,  
22 then. Thank you for your service.

23 **THE COURT:** Thank you very much, Ms. Wyrick.  
24 Any redirect, Ms. Gargeya?

25 **MS. GARGEYA:** No, Your Honor.

1           **THE COURT:** Captain Sundberg, thank you very much for  
2 being here. And thank you for your service. With that, you  
3 are excused. You shouldn't discuss your testimony with anyone  
4 in the event that you're called back to the witness stand.  
5 Thank you, Officer -- Captain Sundberg.

6           **THE WITNESS:** Thank you, Your Honor.

7           **THE COURT:** Thank you very much.

8           With that, as I understand it, the next witness is  
9 Stephanie Miller. Is that right, Mr. Carmichael?

10           **MR. CARMICHAEL:** Yes, Your Honor. Deputy Assistant  
11 Secretary of Defense.

12           **THE COURT:** Okay. Thank you.

13           **MR. STRAWBRIDGE:** While Ms. Miller takes the stand,  
14 Your Honor --

15           **THE COURT:** Sure. She's in the courtroom. Go ahead.

16           **MR. STRAWBRIDGE:** I just wanted to make a quick note  
17 that Ms. Wyrick has to depart for a previously scheduled  
18 engagement. As you know, she came to us in the middle of this  
19 trial as a bit of relief. I did not want her to be able to  
20 leave without noting for the Court --

21           **THE COURT:** Ms. Wyrick, nice to have you. And good  
22 luck in the traffic out there in the rain.

23           **MS. WYRICK:** Thank you very much.

24           **THE COURT:** Have a nice day.

25           **THE CLERK:** Good morning. Please raise your right

1 hand.

2 (Witness sworn.)

3 THE CLERK: You can have a seat. Please state and  
4 spell your first and last name for the record.

5 THE WITNESS: Stephanie Miller. Stephanie is  
6 S-T-E-P-H-A-N-I-E. Last name Miller, M-I-L-L-E-R.

7 THE CLERK: Thank you.

8 THE COURT: Mr. Carmichael.

9 DIRECT EXAMINATION

10 BY MR. CARMICHAEL:

11 Q. Good morning, Ms. Miller.

12 A. Good morning.

13 Q. Where are you currently employed?

14 A. I work for the Department of Defense, specifically within  
15 the Office of the Secretary of Defense.

16 Q. And is there another level down at the -- that you work  
17 at?

18 A. Yes. Within the office of the Secretary of Defense, I  
19 specifically work for the Undersecretary of Defense for  
20 Personal and Readiness, who is presently the Acting Honorable  
21 Secretary Ashish Vazirani.

22 Q. What is the Office of the Undersecretary of Defense?

23 A. Broadly, it's the undersecretary that's responsible for  
24 personnel and readiness, which encompasses a couple of  
25 different categories, such as health affairs, manpower and

1 reserve affairs, our readiness division. There's multiple  
2 different divisions within P&R that broadly help manage with  
3 the services, service members families, and support programs.

4 Q. What is your current job title?

5 A. My title is the deputy assistant secretary of defense for  
6 military personnel policy.

7 Q. What are your job responsibilities?

8 A. Broadly, I'm responsible for working with the services and  
9 providing oversight to maintain the all-volunteer force.

10 Q. Does your office oversee the service academies?

11 A. We do as part of our accession division.

12 Q. When did you assume your present position?

13 A. Approximately two years ago, in summer of 2022.

14 Q. Is your position part of the senior executive service?

15 A. It is.

16 Q. What is the senior executive service?

17 A. The senior executive service is the cadre of senior  
18 civilians, roughly equivalent to our general and flag officers.  
19 It's a portion of the Department of Defense that helps maintain  
20 continuity as we see political leadership and military  
21 leadership evolve over time.

22 Q. Can you provide exams of some of the policies you  
23 currently oversee?

24 A. Certainly. Within our accession division, it's broadly  
25 responsible for all entry requirements. That includes

1 recruiting, qualification standards, medical standards. It  
2 includes looking at N strength and the number of service  
3 members we need to bring in each year.

4 It also looks at recruiting, marketing and advertising,  
5 and other incentives. It's responsible for the GI Bill within  
6 our office of enlisted personnel division that's responsible  
7 for officer assignments, to include joint officer assignments.

8 It's responsible for awards and decorations, such as the  
9 Medal of Honor. It's responsible for voluntary education  
10 programs and programs for separation and retirement of all  
11 service members.

12 And then within our pay and compensation division, we  
13 broadly set pay policy to include basic pay tables, special  
14 incentive pays. We look at geographic incentive pays,  
15 hazardous duty pays, imminent danger pay. We look at  
16 retirement pay, such as -- at various different ways of  
17 managing the force through pay incentives.

18 Within our general and flag officer division, we manage on  
19 behalf of the Secretary of Defense the assignment and  
20 promotions of all one- through four-stars and work in  
21 combination with the Chairman of the Joint Chiefs of Staff for  
22 selection to joint assignment positions, such as combatant  
23 command position.

24 Within our financial readiness division, we're broadly  
25 responsible for working with the services to ensure financial

1 readiness for service members and families, to include managing  
2 responsibly the blended retirement system.

3 And last, but not least, we're also responsible for the  
4 armed forces chaplain's board as well.

5 Q. In your current position, have you testified before  
6 Congress?

7 A. I have.

8 Q. What was the topic of your most recent congressional  
9 testimony?

10 A. In 2021 I represented the department to Congress on issues  
11 pertaining to recruiting and retention.

12 Q. How long have you been part of the senior executive  
13 service?

14 A. Approximately 10 years.

15 Q. Is that all with the Department of Defense?

16 A. It is. I served approximately six years as the director  
17 of accession policy, a little bit over a year as the director  
18 of officer and enlisted personnel management and general and  
19 flag officer management, and then the last two as the deputy  
20 assistant secretary of defense for personnel military policy.

21 Q. You -- I think you mentioned that you were the director of  
22 officer and enlisted personnel. What were your job  
23 responsibilities of director of officer and enlisted personnel?

24 A. I'll just expand a little bit on what I mentioned before.  
25 That division is responsible for working with the services for



1 the management of current service members focused on  
2 recruiting, retention, and assignment as well as separation and  
3 retirement.

4 Q. And what was your position prior to that?

5 A. Prior to officer and enlisted personnel management, I was  
6 the director of accession policy.

7 Q. What does accessions mean?

8 A. Accessions is a term that we use just broadly to mean  
9 entering into the military, making that conversion from a  
10 civilian to a military member.

11 Q. What policies were you responsible as director of  
12 accessions?

13 A. Again, I'll expand a little bit on what I said before.  
14 This has to do with everything from marketing and advertising,  
15 working with the services for broad programs to increase  
16 propensity and willingness to serve. It also helps manage the  
17 entry requirements, establishes many of the entrance  
18 requirements such as moral, medical, conduct, dependent status,  
19 et cetera.

20 We're also responsible for working with intel and security  
21 to establish personnel security and suitability requirements  
22 for entry into the military.

23 And then we work certain incentive programs, such as the  
24 GI Bill and others to incentivize individuals to continue -- or  
25 to select military service.

1 We're also responsible for all military testing programs,  
2 such as the Armed Services Vocational Aptitude Battery, the  
3 ASVAB, and other officer accession requirements, such as the  
4 aviation battery that was previously mentioned.

5 And we're responsible for officer commissioning sources,  
6 such as the Academy's ROTC programs, enlisted-to-officer  
7 programs, and other smaller programs, such as Officer Candidate  
8 School.

9 Q. Was this also an SES position?

10 A. It was.

11 Q. How long did you serve as the director of accessions?

12 A. Approximately six years.

13 Q. And what other positions have you held at the Department  
14 of Defense?

15 A. Prior to the senior executive services positions that we  
16 just discussed, I served as a special assistant to both  
17 Secretary Hagel and Secretary Carter in a broad capacity,  
18 responsible for P&R programs, personnel and readiness programs,  
19 and some other programs, such as budget and comptroller.

20 Q. What positions did you hold before you joined the  
21 Department of Defense?

22 A. Before I was a member of the Office of the Secretary of  
23 Defense, I was a civilian for the Department of the Navy. I  
24 served as a legislative fellow working for Senator Susan  
25 Collins as a Navy civilian. I also served in the Navy's Office

of Diversity and Inclusion in the Office of Women's Policy.

**Q.** Were you ever on active duty?

**A.** I was, yes. I served on active duty from approximately 2001 to 2008 and then served several years following as a reservist.

**Q.** What was your specialty while you were on active duty?

**A.** I was a surface warfare officer, largely focusing on engineering systems.

**Q.** Did you deploy when you were surface warfare officer?

**A.** I did.

**Q.** When and where did you deploy to?

**A.** I deployed twice, largely to the Middle East, during 2002 and 2003 in support of the Iraqi Freedom and Operation Enduring Freedom.

**Q.** Could you describe your post-high school education.

**A.** Yes. I went to Villanova University on a Navy ROTC scholarship. I have a degree in English literature and business administration with a naval science minor. And then I pursued a master's degree and hold a master's in education from George Washington University in adult education and human resources.

**MR. CARMICHAEL:** Your Honor, at this point I'd like to qualify Ms. Miller as an expert in military personnel policy.

**THE COURT:** Any voir dire on this, Mr. Strawbridge?

**MR. STRAWBRIDGE:** No, Your Honor.

1           **THE COURT:** She'll be so accepted as an expert in the  
2 area of military personnel policy.

3           **MR. CARMICHAEL:** Brian, could we pull up DX81, please.

4 **BY MR. CARMICHAEL:**

5 **Q.** Ms. Miller, what is this document?

6 **A.** This instruction is one of the instructions that we have  
7 oversight for, or I specifically have oversight. This is a  
8 Department of Defense Instruction 1322.22. This is military  
9 service academy as it broadly governs the management of the  
10 service academies.

11 **Q.** Is the Naval Academy a primary commissioning source for  
12 Navy and Marine Corps officers?

13 **A.** It is.

14 **Q.** What are the other primary commissioning sources for Navy  
15 and Marine Corps officers?

16 **A.** The other two primary sources are Reserve Officer Training  
17 Corps, ROTC, and OCS, Officer Candidate School.

18 **Q.** I want to pull up 3a and b.

19 Does 3a and b describe some of the primary purposes of the  
20 service academies?

21 **A.** It does. It specifically provides information about the  
22 purpose of the service academies and their general objectives.

23 **Q.** Could you read the 3a and b into the record.

24 **A.** Yes.

25 3a states that "The academies provide, each year, newly

1 commissioned officers to each service that have been immersed  
2 in the history, traditions, and professional values of the  
3 military services and developed to be leaders of character,  
4 dedicated to a career of professional excellence in service to  
5 the nation.

6 3b. "The accession of those officers generates a core  
7 group of innovative leaders capable of thinking critically, who  
8 will exert positive peer influence to convey and sustain these  
9 traditions, attitudes, values, and beliefs essential to the  
10 long-term readiness and success of the military services."

11 Q. When somebody graduates from the Naval Academy, what is  
12 their rank upon commissioning?

13 A. They would either be an ensign in the Navy or a second  
14 lieutenant in the Marine Corps. We generally refer to that as  
15 01, which is the first level of commission service.

16 Q. When somebody graduates from ROTC, what is their rank upon  
17 commissioning?

18 A. It is also 01, also an ensign or a second lieutenant.

19 Q. When somebody graduates from OCS, what is their rank upon  
20 commissioning?

21 A. Most people who graduate from OCS would also be an ensign,  
22 second lieutenant, or an 01. However, within OCS we allow for  
23 constructive credit in certain scenarios where an individual  
24 has attained a high degree of education or professional  
25 licensure, which will allow us to bring them in at a slightly

1 higher rank if it's deemed appropriate to do so.

2 **Q.** If most individuals commission from the Naval Academy ROTC  
3 and OCS as the same rank, O1, then what's the purpose of the  
4 Naval Academy?

5 **A.** I think citing right back here to this exhibit, to  
6 Sections 3a and 3b, the academies are innovative and specific  
7 institutions that we rely upon to have a steeped officer corps  
8 that graduates with a greater degree of knowledge, expertise,  
9 and understanding of military tradition and history than what  
10 we necessarily see at ROTC and OCS.

11 Inevitably, ROTC, OCS, and the Academy all obtain a  
12 baseline level of requirements to be a successful naval or  
13 Marine Corps officer; however, the academies, including the  
14 Naval Academy, is specifically designed to ensure a higher  
15 degree of experience, education, qualification, and preparation  
16 for officership. And as you can see here, we rely upon them to  
17 be a positive peer influence to others from other commissioning  
18 sources to help convey that military and Navy history and  
19 tradition.

20 **Q.** About what percentage of new Navy and Marine Corps  
21 officers each year are commissioned out of the Naval Academy?

22 **A.** Approximately 20 percent.

23 **Q.** About what percentage of new Navy unrestricted line  
24 officers each year are commissioned out of the Naval Academy?

25 **A.** Approximately 28 to 30 percent.

1 Q. What explains that higher percentage of new unrestricted  
2 line officers?

3 A. As was stated by the previous witness, we have  
4 requirements for the Naval Academy to commission approximately  
5 95 percent or higher of their graduating classes into those  
6 unrestricted line warfare communities.

7 MR. CARMICHAEL: Brian, we can take that down now,  
8 please.

9 BY MR. CARMICHAEL:

10 Q. What is an unrestricted line officer in the Navy?

11 A. An unrestricted line officer is the category of  
12 communities within the United States Navy that broadly  
13 encompass our warfare specialties.

14 Q. What are examples of communities of -- or specialties for  
15 an unrestricted line officer?

16 A. These include communities such as the surface warfare  
17 communities -- those are our ships at sea; aviation; it  
18 includes our submarine officers and special forces to include  
19 explosive ordinance disposal.

20 Q. Are unrestricted line officers the only officers in the  
21 Navy that can command ships and submarines and aircraft  
22 squadrons?

23 A. Correct.

24 Q. What is a command billet?

25 A. A command billet is that senior leadership opportunity

1 where we have individuals who compete, and they're selected  
2 based upon their sustained performance over time. Most often,  
3 they're sustained in superior performance at sea, and they are  
4 generally responsible for our warfare fighting platforms.

5 **Q.** Why are unrestricted line officers the only officers that  
6 can command our warfare fighting platforms?

7 **A.** Because they develop over the course of a career specific  
8 knowledge, skills, abilities to actually manage the multiple  
9 different warfighting dynamics on a certain platform. They've  
10 been trained in joint qualifications. They know the  
11 operational structure of the military and how to operate within  
12 it. They understand how to broadly work with other military  
13 services and international forces. They have ultimate  
14 responsibility for their unit to include responsibility to  
15 apply the Uniform Code of Military Justice in discipline  
16 situations.

17 **Q.** Does this mean that most command billets are unrestricted  
18 line officers?

19 **A.** Correct.

20 **Q.** Is having a command billet important for promotion in the  
21 Navy?

22 **A.** It is, ultimately. For our senior cadre of leadership,  
23 which generally would include our 06s, often captains or  
24 colonels and beyond into the general and flag officer ranks,  
25 it's of critical importance to be selected and to perform well



1 in a command billet.

2 Q. Are disproportionate number of warfare command billets  
3 filled by Naval Academy grads?

4 A. They are. As an example, right now we have 12 Navy  
5 carriers, and of those 12, 8 of them are commanded by Naval  
6 Academy graduates, meaning that approximately 67 percent of our  
7 largest warfighting platform in the United States Navy is  
8 commanded by a Naval Academy graduate.

9 Q. By contrast, what is a restricted line officer in the  
10 Navy?

11 A. A restricted line community are those communities that  
12 largely are in combat support roles. This would include  
13 intelligence, cryptology, supply, and logistics.

14 Q. What is a staff corps officer in the Navy?

15 A. A staff corps officer is a cadre of officers that usually  
16 correlate to a profession outside of the military. So these  
17 are your medical officers, your dental officers, your JAGs or  
18 lawyers, and chaplains.

19 Q. Now putting up a charge of officer ranks.

20 We've talked a lot about this during the trial, but we now  
21 have the visual that we can put in the record.

22 Is the gold bar on the far left, is that an O1?

23 A. It is.

24 Q. And this is the rank we were talking about earlier that  
25 Naval Academy, ROTC, and most OSC graduate as?

1 A. Correct.

2 Q. I want to go to the other side where we start at 07 where  
3 it says "General officer, flag officer."

4 Do you see that?

5 A. I do.

6 Q. What is a flag officer?

7 A. A flag officer is a term that we use for those officers  
8 that have achieved the admiral ranks, either one-star through  
9 four-star.

10 Q. What is the significance of a flag officer?

11 A. That is our senior-most leadership cadre inside of the  
12 United States Navy and is equivalent, of course, to one-  
13 through four-star generals as well.

14 Q. Can you give the Court some examples of what positions you  
15 might see somebody fill at the 07, 08 level?

16 A. Certainly.

17 At an 07 and even 08 level, that's generally the first  
18 opportunity to command an integrated warfare group such as a  
19 carrier strike group, which would include the carrier as well  
20 as several other ships.

21 And then at the 09, that's the three-star level, that  
22 would be where you would start to see deputy commanding  
23 generals of combatant commands and other joint integrated  
24 global organizations.

25 And then at the 010, or four-star, level that's where you

1 see the Chairman of the Joint Chiefs of Staff and a service --  
2 or a service commanding officer such as the chief of naval  
3 operations.

4 Q. And the combatant commanders, are those O10 as well?

5 A. They are as well. All of our combatant commanders are  
6 O10s, or four-star admirals or generals.

7 Q. Are the majority of flag officers in the Navy also  
8 unrestricted line officers?

9 A. Correct.

10 Q. About what percentage are unrestricted line officers?

11 A. Within the Navy, out of all officers, it's approximately  
12 68 percent. And then when you look at the O9s and 10s, it's as  
13 much as 78 percent of Navy flag officer positions are  
14 unrestricted line positions.

15 Q. Why are such a high percentage of flag officer billets  
16 unrestricted line officer billets?

17 A. Ultimately, because we rely upon those ranks, again, to  
18 lead those joint integrated warfare fighting areas, both the  
19 platforms and manage the ability to apply strategic strike  
20 capabilities to support national defense priorities.

21 Q. Do a large percentage of flag officers in the Navy and  
22 Marine Corps tend to be Naval Academy graduates?

23 A. They do.

24 Q. About what percentage?

25 A. Generally, it's a larger proportionate population than

1 what we see from other commissioning sources.

2 Q. Ms. Miller, plaintiffs has alleged that Naval Academy  
3 graduates comprise a small fraction of all entry-level naval  
4 officers and, therefore, those graduates cannot make a  
5 difference in terms of the diversity of the officer corps.

6 What's your reaction to that claim?

7 A. I think that reflects a lack of appreciation for how  
8 important those officers are and the knowledge, skills, and  
9 abilities that they graduate with by virtue of having spent  
10 four to five years at the Naval Academy or truly any service  
11 academy.

12 Again, it constitutes 20 percent of the graduating class.  
13 But, again, proportionately for those that retain, we see them  
14 selected at higher rates than other commissioning sources for  
15 those senior positions, both O6 and admiral.

16 Q. And you said earlier that it was -- that two-thirds of the  
17 carriers are commanded by Naval Academy grads?

18 A. That's correct.

19 Q. I think we had -- Admiral Fuller testified yesterday that  
20 it was 40 percent of Naval Academy -- 40 percent of the flag  
21 officer ranks are Naval Academy grads. Is that number  
22 consistent with what --

23 A. That's consistent with what I have reviewed as well.

24 Q. Have you heard the military described as a closed-loop  
25 promotion system?

1 A. Yes. That's a term that we frequently use.

2 Q. What does that mean?

3 A. Generally, it means that there's limited opportunity to  
4 actually bring in an officer outside of the initial  
5 commissioning point.

6 Q. Why is a closed pipeline relevant to the Navy's diversity  
7 efforts?

8 A. Because we, again, have limited opportunity to bring  
9 people in during the course of a career. Specifically within  
10 those unrestricted line or warfighting communities, we have  
11 even statutory requirements that require officers to build  
12 certain skills over time such as joint qualifications.

13 You cannot obtain the rank, particularly of three and four  
14 stars, if you've not obtained those certain qualifications that  
15 inherently are only attained during the course of a full  
16 career.

17 Q. So I kept this chart up here because I want to walk  
18 through some illustrations of what a closed-loop system is. My  
19 understanding is that your brother is the commanding officer of  
20 a Navy destroyer presently?

21 A. He is, yes.

22 Q. Okay. If you don't mind, I'll use him as an example in  
23 there -- in this.

24 So what is a destroyer?

25 A. So a destroyer is one of our primary warfare platforms.

1 It's often the first opportunity for command for a surface  
2 warfare officer.

3 Q. And what rank is somebody when they're commanding a  
4 destroyer?

5 A. Generally an 05, also known as a commander.

6 Q. So that's the silver oak leaf in the middle of the chart?

7 A. It is, yes. Correct.

8 Q. Okay. About how long would it take for somebody to become  
9 an 05 and a commander of a destroyer?

10 A. Usually about 15 to 20 years.

11 Q. Can you give me an example of the typical pipeline that  
12 would lead to command of a destroyer?

13 A. I can. So for commander of a destroyer, a surface warfare  
14 officer would have to, again, demonstrate sustained performance  
15 over multiple jobs. So starting the beginning as an 01 and 02,  
16 you would serve as two division officer tours, frequently on  
17 two different ships.

18 You would then have some time at shore, where you would  
19 start working on those joint qualifications. Then you would  
20 return to sea as a department head, most often for two  
21 department head tours, again, frequently on two different  
22 platforms.

23 You would then return to shore for a shore tour, again  
24 working on those joint qualifications. You would return to sea  
25 as an executive officer, or the second in command of that ship.

1 And, eventually, if you do a good job in that XO tour, then you  
2 will move forward to be an 05 commander of that same ship.

3 Q. Okay. And so just for the record, the division officer  
4 tours, those were 01, 02?

5 A. Correct. And then department head is generally 03, 04.  
6 Executive officer can start as 04, and frequently you fleet up  
7 to 05, and then the captain of the ship of a commander --  
8 excuse me -- of a destroyer in this case would be an 05.

9 Q. Is there any way to short-circuit that process and bring  
10 in somebody from the outside and put them right in as commander  
11 of a destroyer?

12 A. No.

13 Q. Okay. And then what would somebody -- from 05 on, what's  
14 another command position that somebody might have as the 06,  
15 the next one over?

16 A. As an 06, or a captain in the Navy, you would have the  
17 opportunity to compete for what we refer to as a senior command  
18 position or a major command position. These are going to be  
19 command of a larger ship, often a cruiser or a large-deck  
20 amphibious ship.

21 Q. I think Admiral Fuller yesterday said he was commander of  
22 a destroyer squadron as an 06. Is that --

23 A. Yes, that's another example. We have various different  
24 commodores and captains that serve in a role that is  
25 responsible for destroyer squadrons to help overseas, multiple

1 different destroyer squadrons.

2 I served in a destroyer squadron. And, Drew, I believe  
3 you did too. I think we served at the same time in two  
4 different destroyer squadrons.

5 Q. Correct.

6 If the officer is selected for 07, what might be a command  
7 that they might have?

8 A. So, again, at 07 and early 08, again, that would be the  
9 opportunity to command, say, a carrier strike group, which  
10 would be an integrated unit of multiple different ships.

11 Q. How long would it typically get to be commander of a  
12 carrier strike group?

13 A. Usually about 25 to 30 years.

14 Q. Is there any way to short-circuit that and bring in  
15 somebody right from the outside and make them commander of a  
16 carrier strike group?

17 A. No.

18 Q. Okay. So let's go all the way to the right side for the  
19 four stars.

20 Is that the rank of the chief of naval operations?

21 A. It is.

22 Q. Okay. About how long would it take somebody to become the  
23 chief of naval operations?

24 A. Approximately 35 or more years.

25 Q. Is there any way to short-circuit that and bring in the



1 CEO of some other company and put them in as the chief of naval  
2 operations?

3 A. No.

4 Q. Now, we just went through an example of how the closed  
5 system works for the Navy.

6 Does it work the same way for the Marine Corps?

7 A. Generally, yes.

8 MR. CARMICHAEL: Thanks, Brian. We can take that down  
9 now.

10 BY MR. CARMICHAEL:

11 Q. Can DoD, the Navy, and Marine Corps consider race and  
12 ethnicity later in an officer's career when making promotion  
13 and assignment decisions?

14 A. No.

15 Q. So in a closed-loop promotion system, how can the Navy and  
16 Marine Corps attain a racially and ethically diverse group of  
17 senior officers to command ships, submarines, and aircraft  
18 squadrons?

19 A. It relies in that large part on that large incoming group  
20 through our accession and commissioning sources.

21 Q. Does the fact that the Navy and Marine Corps cannot  
22 typically consider race and ethnicity in making promotion  
23 assignment decisions later in an officer's career make it more  
24 or less important to consider race and ethnicity for admittance  
25 to the Naval Academy?

1 A. I believe more because, again, you have to start with that  
2 large pool that you bring in. And then you need to sustain and  
3 develop them over the course of time, making sure that they  
4 obtain the wide range of experiential learning and then  
5 qualifications in joint assignments to then be even eligible to  
6 compete for our higher leadership positions.

7 Q. Are there certain Navy unrestricted line communities that  
8 are less diverse than others?

9 A. There are. Generally, we see less diversity in our  
10 aviation, submarine, and special forces divisions.

11 Q. Plaintiff has made the argument that, to achieve diversity  
12 in certain communities, that the Navy could stop considering  
13 race and admissions to the Naval Academy but then consider race  
14 and ethnicity in assignment process to reallocate officers to  
15 different communities.

16 What's your reaction to that argument?

17 A. Again, I think that that lacks an appreciation for overall  
18 human resources management and military personnel management.

19 We want to make sure, as the previous witness indicated,  
20 that we have a strong match between the knowledge, skills,  
21 capabilities, and interests of the individuals to the service  
22 opportunities that we have.

23 And we try to do that to the greatest extent that we can,  
24 as indicated by some of the percentages that the previous  
25 witness provided. It is true that certainly we do take into

1 account, where needed, the needs of the individual service  
2 concerned, but we recognize and have evidence over many years  
3 of managing the force that if we inevitably force someone to go  
4 into a community that they're not necessarily interested in,  
5 then we're likely to see higher attrition over time, which is  
6 not in the best interests of the Navy nor the department.

7 Q. If you took somebody from -- you know, say, an African  
8 American and took them from the surface warfare community and  
9 made them an aviator, does that just mean the surface warfare  
10 community is now less diverse?

11 A. That's correct, Drew.

12 I mean, generally, because we have this closed-loop system  
13 both in the United States military but also at the service  
14 academies, because the number of individuals that we can either  
15 bring into the academies or sustained in active duty service is  
16 constrained by Congress, then, inevitably, if you're moving one  
17 group of people from a community to another, it's just  
18 essentially redistributing the total population.

19 Q. I think I saw you reaching for water. You might not have  
20 known, but I put it behind the screen.

21 A. Thank you.

22 Q. Okay. I want to discuss ROTC for a bit now.

23 What is ROTC?

24 A. ROTC is another one of our primary commissioning sources.  
25 It stands for Reserve Officer Training Corps.

1 Q. How do the military services award ROTC scholarships?

2 A. It's vis-a-vis a selection board. Because we only have  
3 ROTC units at certain brick-and-mortar universities and  
4 colleges, we have to rely upon where the individual is actually  
5 offered admissions. And then we can take a look at if they  
6 meet the certain qualifications to become an officer, certainly  
7 baseline qualifications in terms of academic performance as  
8 well as medical requirements and then ability to successfully  
9 complete the course of instruction and ultimately the potential  
10 to be a successful officer.

11 Q. How is that -- how is ROTC different than the Naval  
12 Academy?

13 A. The Naval Academy and ROTC programs are two very different  
14 programs. Within ROTC, again, we're relying upon the initial  
15 admissions of the college or university where the ROTC unit is  
16 located. So we're not evaluating necessarily their academic  
17 qualifications to complete that four years of academic  
18 instruction; rather, we're looking at their ability to complete  
19 the specific academic and training and education requirements  
20 we have in addition to their potential to be an officer.

21 And, generally, because there are certain restrictions  
22 both from a legal and policy level on considering race and  
23 ethnicity or gender in a selection process, then we cabin our  
24 review to that whole-person review outside of those dynamics.

25 Q. So I think you mentioned this, but does the Navy consider

1 race and ethnicity when awarding ROTC scholarships?

2 A. We do not. And, again, I mentioned one of the reasons for  
3 that.

4 The other reason is that we have a broad representation of  
5 ROTC units across the country to include a wide range of  
6 colleges and universities which also includes historically  
7 Black colleges and universities and other minority-serving  
8 institutions. And so generally we see a higher percentage of  
9 diversity coming out of those ROTC programs by virtue of those  
10 schools.

11 I should also acknowledge it's a wide range of how schools  
12 are necessarily classified, Tier 1 versus Tier 2 schools. And  
13 so the range, if you will, of academic rigor might be different  
14 across the spectrum.

15 Q. Does DoD monitor the location and size of an ROTC unit to  
16 see if it's producing a diverse group of officer candidates?

17 A. We do. Among many different ways of evaluating the health  
18 of our commissioning sources, we will take a look at whether  
19 we're seeing applications increase or decrease. We take a look  
20 at four-year, three-year, and two-year scholarship  
21 opportunities.

22 We take a look at where we're seeing applications for ROTC  
23 at certain schools increase or decrease. And then we try to  
24 manage the total number of scholarships to ensure that we're  
25 responsive to where we're seeing the demand signal as well as

1 making sure that we have a broad range of, I would say,  
2 geographic representation.

3 Q. Has the fact that civilian universities cannot consider  
4 race and ethnicity in their admissions impacted the diversity  
5 of the officers coming in through ROTC?

6 A. I think that remains to be seen. It's something that  
7 we're certainly keeping close tabs on by virtue of some of the  
8 more recent admissions outcomes that are being reported by  
9 schools such as MIT and Harvard.

10 I think it reasons that we may see a decline in diversity  
11 ultimately within ROTC units since, again, we're reliant upon  
12 their entry and acceptance into those colleges and universities  
13 before we can award them a scholarship.

14 Q. If DoD does see a -- I'll start that over.

15 If DoD does see a reduction in diversity at ROTC, would  
16 that mean that consideration of race and ethnicity in the  
17 admissions process at the Naval Academy would increase in  
18 importance?

19 A. I certainly believe so. Again, it's one of the limited  
20 areas where we are able to take that small consideration. And  
21 if we are unable to do so in other aspects and we see that  
22 diversity decline in some of those other commissioning sources,  
23 then it becomes ever more important to ensure that other  
24 primary commissioning sources such as the Naval Academy do have  
25 that representation.

1 Q. I want to now put up DX204.

2 Ms. Miller, have you seen this document before?

3 A. I have.

4 Q. What is this document?

5 A. This is an analysis that was provided to the Court. It's  
6 generally -- it generally represents the type of analysis that  
7 we do to analyze the health of our commissioning sources. It  
8 broadly provides a snapshot of retention over several different  
9 critical points as well as looking at specific representation  
10 demographics in certain grades.

11 Q. Looking at the top, it says -- well, let's turn to page 2.

12 At the top it says that this is from the Defense Manpower  
13 Data Center active-duty master file from 2001 to 2024.

14 What is the Defense Manpower Data Center?

15 A. The Defense Manpower Data Center, or DMDC for short, is  
16 the primary and authoritative source from which we do personnel  
17 and manpower analysis. They maintain the overall statistics  
18 for the Department of Defense. They're the authoritative  
19 source for this data.

20 Q. Why does the data start in 2001?

21 A. For a few different reasons. Generally, we felt that '01  
22 through 2024, 2023 represented a 20-plus-year career, which  
23 gives you a sense of retention patterns over time through that  
24 20-year point, which is when individuals can obtain a full  
25 retirement.

1 It's also where we had the most consistent data available  
2 to us and the most recent.

3 Q. It's also a good year group. It'll actually have me in  
4 there, then.

5 A. And myself.

6 (Laughter.)

7 BY MR. CARMICHAEL:

8 Q. Did DoD only present data on active-duty service members?

9 A. We did. We did that on purpose because, again, all  
10 graduates from the Naval Academy must graduate, with rare  
11 exception, into the active-duty force. And then it also  
12 provides the most representative sample of a typical career  
13 pattern.

14 We certainly could have included reserve component  
15 information. Reserve component promotion and retention looks  
16 very different and has different requirements than active duty;  
17 so it was most important to provide the active-duty  
18 information.

19 Q. Okay.

20 Can we turn to page 3, please.

21 What is Table 1?

22 A. Table 1 is a coded race and ethnicity group definition  
23 table. It provides the codes that we typically use associated  
24 with the definitions for race and ethnicity.

25 Q. Why were these specific race and ethnicity groups used for



1 this document?

2 A. This corresponds to guidance from the Office of Management  
3 and Budget that applies to all federal agencies.

4 Q. When does DoD collect this demographic information from  
5 the service member?

6 A. Typically, we collect it at the point of entry. So in  
7 this case it would be on entry into the Naval Academy. And  
8 there's frequently an opportunity to update this information  
9 throughout the course of an individual's career. That most  
10 often occurs when you report into a new command and you're  
11 reviewing all of your personnel information with the  
12 administrative division.

13 Q. So this is all -- this would be self-identified?

14 A. It is, yes.

15 Q. And I see on Table 1 there's an abbreviation that  
16 indicates multiple race codes. Who would be encompassed in the  
17 multiple race codes category?

18 A. It could essentially be two different communities. It  
19 could be those that actually self-identified as being  
20 multiracial, or it could be those who actually selected two  
21 different races such as Black/African American or  
22 White/Caucasian.

23 Q. Could we now turn to page 4, please.

24 Okay. This page is headed "USNA and USMC Active Duty 01  
25 Racial and Ethnic representation over time."

1 What does Table 2 on this page show?

2 A. Table 2 provides that '01 year group by cohort size by  
3 race and year group.

4 Q. Are there any trends that you see in this data?

5 A. Yes. Generally, the data indicates that we've seen an  
6 increase in Black, multiracial, and Asian representation over  
7 the course of time.

8 Q. Can we go to page 5, please.

9 What does Table 3 on page 5 show?

10 A. Table 3 is the same information essentially as Table 2 but  
11 now represented as a percentage of the total year group.

12 Q. Are there any trends that you see in this one?

13 A. Again, this helps represent that growth over time in  
14 specific areas such as Asian, Black, and multiracial.

15 I should note too that we do see a corresponding decline  
16 in the White/Caucasian, but that reasons is, again, this is a  
17 closed-loop system. So, inevitably, if you see one group  
18 increase, you're likely to see another group decrease.

19 Q. Okay. And then -- I guess this is what you were  
20 mentioning, that in 2001 there was an 85 percent White and then  
21 in 2023 72 percent?

22 A. Correct.

23 Q. Could we turn to page 6, please.

24 What does Figure 1 on this page show?

25 A. I'm sorry. I thought you were continuing your question.

1 Q. No, no. I'm switching pages.

2 What does Figure 1 on this page show?

3 A. Figure 1 is a graphical representation of that same  
4 information that was on the previous table. In this case, we  
5 combined all of the minority groups together for the ease of  
6 being able to observe the trends.

7 And what you can generally see here is that, over time,  
8 minority has increased and we've seen some decline in White.  
9 But, again, that's rational in this case.

10 Q. Because it's a closed loop?

11 A. That's correct.

12 Q. I think you used the term, it was "a finite number"?

13 A. Correct. Again, statutorily controlled.

14 Q. Could we turn to page 7, please.

15 What does Figure 2 on this page show?

16 A. Figure 2 is the same graphical representation as Figure 1.

17 In this case, you can see the dotted line, which  
18 essentially is the raw data juxtaposed against the trends line.  
19 We provided this just so that you could see the variation over  
20 time.

21 Q. Okay. Is this dotted line behind every trend line that  
22 we're going to go through?

23 A. It is, yes.

24 Q. I think we have two on each. So we'll just skip the  
25 dotted line one going forward to move it forward.

1 Could we go to page 8, please.

2 What is Table 4 showing at the top of page 8?

3 A. This shows that same '01 year group cohort size but now  
4 demonstrating ethnicity.

5 Q. What are the ethnicity categories represented here?

6 A. In this case, HSP stand for Hispanic, NOD stands for not  
7 disclosed, NOH stands for not Hispanic.

8 Q. Why were these specific ethnicity categories chosen here?

9 A. Again, OMB has us collect the data this way and  
10 essentially only provides one ethnicity category, which is  
11 Hispanic.

12 Q. And what does the bottom table show, Table 5?

13 A. That is the same information now represented by percent.

14 Q. Could we go to Figure 3 on page 9.

15 What does this chart show?

16 A. This is the graphical representation of that previous  
17 table. And here you can observe that we've seen a slight  
18 increase in Hispanic representation over time, again, with a  
19 slight decrease in the non-Hispanic.

20 Q. Do you know why that there would be a high percentage  
21 there on the ethnicity category of undeclared?

22 A. I do not. This is self-reported data.

23 Q. Could we go to page 11, please.

24 This one is titled "USN and U.S. Marine Corps active-duty  
25 retention over time."

1 What does retention mean in this context?

2 A. Here what we provided was what we call retention at the  
3 officer first gate. So this is at approximately five years of  
4 service. For the benefit of being able to determine what the  
5 retention pattern was in this data, which is typical, we  
6 provided five years and six months to account for any changes  
7 or separations.

8 Q. What does first gate mean?

9 A. So first gate typically refers to the first opportunity  
10 that the majority of officers have the ability to leave the  
11 military service, in this case, the Navy.

12 Q. Okay. And you said that was five years for most graduates  
13 of the Naval Academy?

14 A. That's correct.

15 Q. Are there some circumstances it would be longer than five  
16 years?

17 A. There are. Our aviation pipelines typically incur a  
18 larger -- longer service obligation. It's typically eight  
19 years. In some cases we do allow graduates to go on to pursue  
20 additional education, graduate school education, in which case  
21 we may add an additional service obligation. That situation  
22 applies to my current military assistant, who went to Oxford  
23 after graduation.

24 Q. What does the chart at the bottom show, Table 6, I guess?

25 A. So this shows the average retention rates by race,

1 category, and year group at that first five-year period, five  
2 years and six months.

3 Q. Could we go to page 12, please.

4 What does Figure 5 on page 12 show?

5 A. This shows the trend for retention. It's the graphical  
6 representation of that previous chart. It shows it at that  
7 first-gate period by racial category.

8 Q. Are there any trends you see in this -- in this chart?

9 A. Generally we see retention improving over the course of  
10 time for both groups.

11 Q. Okay.

12 Could we go to page 14, please.

13 What is shown on this page?

14 A. This is first-gate retention by ethnicity.

15 Q. Are there any trends you can identify from the data here?

16 A. Again, we see relative improvement in retention patterns  
17 over the course of time. It would be appropriate to  
18 characterize the non-Hispanic retention category as somewhat  
19 more flat.

20 Q. Before we move on from first-gate retention, are there  
21 any -- are there any overall trends that you see for first-gate  
22 retention?

23 A. Again, we're seeing general retention improvement over the  
24 course of time, which is good. Again, as that first  
25 opportunity to potentially leave the military service, we want

1 to make sure that we are retaining that largest pool of talent  
2 forward to eventually select for other leadership  
3 opportunities.

4 So this gives us a good sense of what pool we may be  
5 working with versus those that might have elected to leave,  
6 which is a loss for us in terms of training and education,  
7 particularly at the academies, where we invest anywhere between  
8 250 to 400,000 in each individual at a service academy.

9 Q. So goes without saying, I guess. You said it is a very  
10 good thing that if -- that retention from net Naval Academy  
11 graduates is going up beyond the five-year mark?

12 A. Correct.

13 Q. Could we turn to page 17, please.

14 What is shown on that page and in this chart?

15 A. So this is 10-year retention by race.

16 Q. Why was the 10-year mark picked for this dataset?

17 A. 10-year is a typical and critical point in time for us to  
18 observe retention patterns amongst officers. This is typically  
19 when most officers will have obtained a higher degree of  
20 qualification and certification.

21 For example, within the aviation community at this point,  
22 they have obtained their flight qualifications and have likely  
23 performed a large number of flight hours through their first  
24 operational assignments. That means that they may be  
25 attractive to outside companies, like the airlines.

1 So we see dynamics, such as kind of pull factors, from  
2 those civilian opportunities; and then we see some internal  
3 factors, push factors, such as the fact that at this point they  
4 may have attained a family to include children. This is when  
5 we start to see interest in geographic stability start to  
6 emerge. So that may play a decision in the retention patterns.

7 At 10 years we're also starting to get a good sense of how  
8 competitive they are for those future opportunities and whether  
9 they may be on track or slightly off track. This is a key  
10 moment in time to be either able to have that conversation with  
11 the officer and advise of additional training and assignment  
12 opportunities to help make them more competitive later on or  
13 for some reason they are so far off track that it is not in  
14 their best interest to potentially retain.

15 Q. Could we go to page 18, please.

16 What does Figure 9 on that page show?

17 A. Excuse me. Could you repeat the question?

18 Q. Yes. What does Figure 9 on that page show?

19 A. So this shows 10-year retention by racial category.

20 Q. Are there any trends you see in this chart?

21 A. Here, we see a slight improvement over the course of time  
22 for both minority and White categories.

23 Q. Could we go to page 20, please.

24 What does this chart show?

25 A. This shows 10-year retention by ethnicity category.



1 Q. Are there any trends you see in this chart?

2 A. In this chart we see that the non-Hispanic population has  
3 generally increased over time, and we do see declines in the  
4 Hispanic population.

5 Q. I'll ask you a question about that in a minute. But for  
6 now we'll go on to page 22.

7 What is depicted on that page?

8 A. This is retention at 15 years of service, and this is  
9 specifically by race group and year group.

10 Q. Why was 15-year picked for this dataset?

11 A. 15 years is another typical time period in which we review  
12 the status of officer health. We know that generally, if the  
13 officer has retained at 15 years, then they're most likely to  
14 continue on to retain to at least 20, which was that point in  
15 time I mentioned where you qualify for full retirement  
16 benefits.

17 It's also the point in which we are seeing selection to  
18 some of those significant command opportunities, and so that  
19 gives us a sense of where we might see our future leaders start  
20 to emerge. And it's a critical period in which we start  
21 working with individuals to place them into development  
22 opportunities that generally lead to stronger consideration for  
23 flag or general officer.

24 Q. Could we go to page 23, please.

25 What does Figure 13 on that page show?

1 A. This represents -- it's a graphical representation of that  
2 previous table that shows trends over time for race category at  
3 the 15-year point.

4 Q. Are there any trends you see in this chart?

5 A. Again, we see some small growth over time in retention for  
6 the minority population. And we see some small decline for  
7 White, but it can also be characterized as relatively flat.

8 Q. Can we turn to Figure 15, please. Page 25, Figure 15.

9 What does Figure 15 on this page show?

10 A. This is a graphical representation of 15-year retention by  
11 ethnicity.

12 Q. Are there any trends you see in this chart?

13 A. Yes. We see a decline in Hispanic retention over time,  
14 and we see, again, relatively flat retention at non-Hispanic.  
15 This makes sense to me given what we looked at at 10 years.

16 Q. Has DoD looked into what appears to be a decline in  
17 retention rates for Hispanic at the 10- and 15-year mark?

18 A. We have. I would say that we have reviewed that in a  
19 broad sense across all Hispanic officer retention patterns.  
20 But since that pattern is consistent with what we see here for  
21 the Naval Academy graduates, I think it's applicable.

22 Q. And what did DoD learn with that study?

23 A. There's a range of factors that we have observed that play  
24 into Hispanic officer retention over time. A couple of those  
25 factors could be the initial community that they select to go

1 into. In some cases, even if it is an unrestricted line  
2 community, there are certain platforms within those communities  
3 that may be more advantageous than others.

4 For example, we often see more senior officers selected  
5 from those who go to cruiser or destroyer tours than we might  
6 see from amphibious ships.

7 Same thing within the aviation community. We see kind of  
8 greater promotion opportunities from our fixed-wing aircraft,  
9 such as fighter jets, as opposed to rotary wing or helicopters  
10 or some of other platforms, such as P8s which are essentially  
11 our submarine hunters. So it could be a matter of where they  
12 are entering into initially.

13 We also see that, within the Hispanic officer population,  
14 they're very strong on community and family ties. So we do see  
15 sometimes they are requesting to stay in a certain location for  
16 geographic stability, both for their immediate family and  
17 perhaps their extended family.

18 Then we also have observed that there may be a lack of  
19 general mentorship and coaching and education that may be  
20 occurring that kind of plays into, ultimately, some of their  
21 requests for certain assignments.

22 It's critically important, as we've observed in multiple  
23 different studies, to have these strong mentorship and  
24 development opportunities to advise individuals where they  
25 should be considering opportunities that may lead to further

1 advancement.

2 Q. Do you think having a more diverse officer corps helps  
3 provide those greater mentorship opportunities?

4 A. Absolutely. I think it would be a mistake to assume that  
5 you have to have a mentor or coach that looks exactly like you,  
6 but I think that it is certainly appropriate -- and the  
7 evidence and research would demonstrate this, that there is a  
8 certain benefit to being able to connect with an individual who  
9 perhaps has shared experiences as you. That might be the same  
10 race or ethnicity or gender, or it could be amongst race,  
11 ethnicities, or genders, particularly in minority communities,  
12 because there's often shared experiences in terms of being a  
13 smaller representation as part of a larger organization.

14 So it is important to make sure that we have that broader  
15 officer pool with diverse representation to provide that  
16 mentorship in coaching and also to demonstrate that you can do  
17 this. We often find within these communities that there's a  
18 lack of self-efficacy or belief that they can be successful,  
19 particularly if they don't see those that look like them who  
20 have already achieved that success.

21 Q. Could we turn to page 28, please.

22 What does that page show.

23 A. Here we see -- just to make sure, at page 28, Table 12?

24 Q. Yes. Page 28, Table 12.

25 A. This is information for 20 years of service by racial

1 group, specifically for Naval Academy graduates into the Navy  
2 and Marine Corps.

3 Q. How does the 20-year data differ from the retention data  
4 at the 5-, 10-, and 15-year marks that we just went through?

5 A. These are counts or snapshots in time within each year  
6 using the September information, so fiscal year date, within  
7 each cohort.

8 Q. Are there any trends you see in this chart?

9 A. Generally, we see, again, an improvement over time of  
10 minority populations, specifically Asian, Black, and  
11 multiracial.

12 Q. Could we turn to page 29, please.

13 What does the table here show?

14 A. So this is, again, similar representation of each racial  
15 group with 20 years of service, and then the following table  
16 provides ethnicity. This is a percentage versus raw.

17 Q. Percentage. Okay.

18 All right. Could we go to page 31, please.

19 What does this page show?

20 A. This is the demographics for active duty O6 officers in  
21 the Navy and the Marine Corps.

22 Q. Since this is broken down by rank in a specific year, does  
23 that mean that an O6 who obtained the rank of -- or somebody  
24 that obtained the rank of O6 in 2002 could also be captured --  
25 in 2022 could also be captured in the 2023?

1 A. That's correct. And this is all individuals with that  
2 rank of 06, and so this could include some prior enlisted  
3 service.

4 Q. Are there any trends that you see in this chart?

5 A. Again, we see general improvement over time amongst Asian,  
6 Black, and multiracial groups.

7 Q. So more 06s, more percentage -- excuse me. More 06s are  
8 minorities in 2023 than they were 20 years ago?

9 A. That's correct. And, again, I think it's appropriate to  
10 acknowledge that here we're talking about 06s in service during  
11 these periods of time.

12 And again, also, closed-loop statutorily controlled; so  
13 that's why you don't see much variation in the total of number  
14 of 06s from year to year.

15 Q. About how long does it take to make 06?

16 A. Usually about 20, 25 years.

17 Q. Okay. Could we -- I want to flip back to page 5 for a  
18 moment. Okay. This was some of our initial -- initial data  
19 that we went through.

20 Plaintiff has made the point that, in the last few Naval  
21 Academy classes, Asian Americans are slightly overrepresented  
22 relative to the general population.

23 Do you see the year group 2022 and 2023 for Asian  
24 Americans on this chart?

25 A. I do.

1 Q. Do you see -- I don't know if I can -- for the 2022 and  
2 2023, it looks like Asian were 8 percent of the new 01s and  
3 Asians were 9 percent of the new 01s at 2023.

4 Does that look right?

5 A. Correct.

6 Q. Are those percentages higher than the general population  
7 of Asian Americans?

8 A. Yes. They're slightly higher than the current population,  
9 which is a little bit over 7 percent, I believe.

10 Q. Can we flip back to page 32.

11 So this is the 06 data again. So I want to look at Asian  
12 Americans again for 2023. Is that correct that that is  
13 2.9 percent in 2023 for 06?

14 A. Correct.

15 Q. That's below the percentage of Asian Americans in the  
16 general population, correct?

17 A. Well below. But, again, at 06, this represents the  
18 population that inherently would have been there 20, 25 years  
19 ago.

20 Q. Do you know --

21 A. I would say, because we've seen improvement in retention  
22 over time of minority populations, it reasons that that higher  
23 percentage that we brought in of Asian Americans at that 8 and  
24 9 percent, because we've seen improved retention over time, it  
25 reasons that we would be cautiously optimistic that we may see

1 higher retention at 06 in again 20 to 30 years.

2 Q. Because I guess in 2001 and 2002, it has zero for those --

3 A. Correct.

4 Q. And now it's 3 percent?

5 A. Correct.

6 Q. But not quite 7 percent?

7 A. No.

8 Q. What is the table -- I still have both up, but what does  
9 Table 18 on the bottom show?

10 A. Table 18 is the same information now with ethnicity.

11 Q. Could we go to page 33.

12 What does this chart show?

13 A. This is the percentage representation of that ethnicity at  
14 the 20-year mark -- excuse me. Not 20 years. Excuse me. At  
15 the 06.

16 Q. Are there any trends that you see in this?

17 A. We've seen, again, some small improvements over time, even  
18 for Hispanic populations.

19 Q. Could we go to page 35, please.

20 What does that page show?

21 A. This shows Navy and Marine Corps general and flag officers  
22 from -- identified by racial group over time, specifically for  
23 those who commissioned from the Naval Academy.

24 Q. Okay. And similar to the 06 data, could somebody  
25 potentially be counted twice if they made flag in, say, 2022



1 and are still a flag in 2023?

2 A. That's correct.

3 Q. Are there any trends that you see in this chart?

4 A. Again, we see small but measurable improvements for  
5 minority populations over the course of time.

6 MR. CARMICHAEL: Brian, could we pull up the other  
7 one. That one.

8 BY MR. CARMICHAEL:

9 Q. So I noted -- is it that -- in 2001 flag officers were  
10 99 percent White?

11 A. That's correct. And then over the course of time, now  
12 it's approximately 92 percent. So, again, small but  
13 measurable, but it's still a predominantly White and, I would  
14 say, male senior cadre.

15 Q. And then, I guess, Asian Americans there are 1.8 percent.  
16 Is that correct?

17 A. That's correct.

18 Q. Could we turn to page 36.

19 What does this page show?

20 A. This is, again, Navy and Marine Corps general and flag  
21 officers identified by ethnicity over time.

22 Q. Are there any trends that you see in this chart?

23 A. Again, I feel that we see small but measurable  
24 improvements in Hispanic representation within the general and  
25 flag officers over time.

1 Q. Okay. Could we pull down the slides now.

2 Are there any overall trends that you see in this group of  
3 charts?

4 A. Yes. I think, as I've consistently stated, we see small  
5 but measurable improvements in diversity representation over  
6 time, both for retention and then overall counts, which is a  
7 good news story. It means that I think we're doing a better  
8 job of not only selecting but then developing and retaining and  
9 promoting that talent over the course of time.

10 I think it's really important, though, to acknowledge how  
11 long this has taken and how small incrementally the gains are.  
12 So, again, we are reflecting small populations from 20 or 30  
13 years ago.

14 For myself and my role as a deputy assistant secretary for  
15 military personnel policy, it's encouraging to see the growth  
16 and diversity that is coming, in this case, through the Naval  
17 Academy. It gives me some reason to be cautiously optimistic  
18 that we can develop this talent over time; and, again, in 20 to  
19 30 years, then we may see larger representation in our senior  
20 ranks.

21 Q. And this is with the consideration of race and ethnicity  
22 over the last 30 years; is that correct?

23 A. That's correct. And so, again, for the work that we do,  
24 we are very mindful that, quite frankly, if we were to be  
25 prevented from considering it, even in a limited fashion, that

1 we would see potentially very different outcomes. Much has  
2 been reported by other Tier 1 institutions, which could then  
3 have a critical impact on retention and representation over  
4 time.

5 And I should say, while we certainly take a hard look at  
6 the flag and general officer community, it's really important  
7 to have that representation at the O6 level. It would be  
8 inaccurate to say that someone who retires at an O6 has not  
9 been a fully successful and influential member of the military.  
10 It still represents only about 5 percent of the Navy. So even  
11 if we can see growth into that critical grade, that would be  
12 considered a success.

13 Q. And you mentioned earlier that O6 was a major command,  
14 right?

15 A. It is, yes.

16 Q. Typically, aircraft carrier commander and destroyer  
17 squadron?

18 A. That's right. So, again, we mentioned the vast majority,  
19 more than 95 percent, of Naval Academy graduates are required  
20 to go into those unrestricted line communities. So, again, if  
21 we saw a decline in representation at the Academy, then it  
22 reasons that we would see a decline in those unrestricted line  
23 communities over time, and that can have significant impacts, I  
24 believe, for the force.

25 What this represents is our hedge against the risk of

1 experiencing some of those racial tensions that we saw in the  
2 past and a potential disinterest by other minority groups, to  
3 include women, of potentially serving in the military where  
4 they don't see themselves represented and they don't believe  
5 that they may be successful.

6 **Q.** What benchmarks does DoD use to measure the level of  
7 diversity it would like to see in its officer corps?

8 **A.** We use several different benchmarks to evaluate our health  
9 of the force. I'll start broadly and kind of work down to  
10 something more narrow.

11 So we look broadly at the demographics of the United  
12 States as compared to our current active duty and reserve  
13 force. We then take a look at those that are eligible to serve  
14 by virtue of our established qualifications.

15 We also take a look at those that are eligible for officer  
16 programs at a higher degree of qualification. We take a look  
17 at the representation of diversity in officer as compared to  
18 enlisted cadres.

19 And then we also take a look at the representation of  
20 senior officers, generals and flag officers, to the junior  
21 officer population.

22 **Q.** Okay. I'd like to go through each one of those that you  
23 mentioned.

24 What do you mean by comparison to the overall U.S.  
25 population?

1 A. Pardon me. In comparisons to the broader U.S.  
2 demographics, we typically rely upon census data, specifically  
3 the American Community Survey Data, which includes broad  
4 information about race, ethnicity, gender, age. It includes a  
5 range of statistics that we look at.

6 Q. And what did you mean by comparison to the eligible  
7 population?

8 A. Inevitably, joining the military requires that you meet  
9 certain qualifications. I've mentioned health or medical  
10 qualifications. We also have certain requirements to achieve  
11 certain scores on our entry exams. We also take a look at,  
12 again, if you have any record of criminal activity.

13 And then we also take a look at the number of dependents  
14 that you have. We limit the number of individuals who are  
15 allowed to come into the military based upon dependent status  
16 with some waiver opportunities, in large part because our basic  
17 pay table is not designed to support larger families at those  
18 lower ranks.

19 Q. What sort of differences does DoD see between the overall  
20 U.S. population and the eligible U.S. population?

21 A. Unfortunately, over the course of the last several years,  
22 we've seen declining eligibility amongst the general youth  
23 population, that's usually 17 to 24 years of age. Just a few  
24 short years ago, approximately 29 percent of Americans would  
25 qualify for service without a waiver. That eligibility

1 threshold has declined to about 23 percent, in large part  
2 because we've seen an increase amongst that youth population  
3 for disqualifying factors such as mental health and behavioral  
4 health and obesity.

5 Q. What did you mean by comparison of the officer corps to  
6 the enlisted ranks?

7 A. Again, we feel that it's critically important that we  
8 have -- or we work towards greater representation within the  
9 officer community as compared to the enlisted community.

10 Generally, we have been successful at achieving representation  
11 or parity with the eligible population for the enlisted ranks,  
12 but we see larger disparities within the officer ranks. And,  
13 again, we think it's critically important, for a number of  
14 reasons, to have that diversity and close to equal  
15 representation for officers to enlisted cadre.

16 Q. About what percentage of the enlisted force is minority?

17 A. Approximately 40 percent.

18 Q. So is the Navy close to meeting any of these metrics that  
19 you laid out?

20 A. Generally for the enlisted force, yes; for the officer  
21 force, no. It's much smaller.

22 Q. So for the officer corps, the Navy is not close to meeting  
23 the overall U.S. population or eligibility or enlisted?

24 A. No. No, we're not. And it's something that we're mindful  
25 of.

1           **MR. CARMICHAEL:** Your Honor, I have about half hour  
2 left to go. I don't know if this is --

3           **THE COURT:** This might be a good spot to stop for  
4 lunch. We'll take an hour-and-10-minute break. I've got to  
5 meet with some of the other judges for a meeting today. So  
6 we'll break and reconvene at 2:00.

7           Secretary Miller, it's better if you don't talk with  
8 anyone -- you should not talk with anyone about your testimony  
9 while you're on the witness stand. So the best thing is, I've  
10 been advising people, just have lunch by yourself if you can.

11          So with that, we'll stand in recess until 2:00.

12          **THE CLERK:** All rise. This Honorable Court is now in  
13 recess.

14          (A recess was taken from 12:48 p.m. to 2:11 p.m.)

15          **THE COURT:** Good afternoon. You all may be seated.  
16 You may continue, Mr. Carmichael.

17          **THE CLERK:** Mr. Carmichael, if you don't mind speaking  
18 up a bit. It's hard to hear you through the sound system.

19          **MR. CARMICHAEL:** Okay.

20 **BY MR. CARMICHAEL:**

21 **Q.** Ms. Miller, before the break, I asked you what the  
22 percentage of enlisted members are minority, and you said  
23 40 percent.

24 Do you remember that?

25 **A.** Yes.

1 Q. I forgot to ask you the follow-up question, which is when  
2 you add in ethnic minorities, specifically Hispanics, to that  
3 40 percent, do you know what it is?

4 A. Not immediately, no. But, ostensibly, it would increase  
5 that percentage.

6 Q. 55 percent?

7 A. That sounds approximately correct, based on my previous  
8 reviews.

9 THE COURT: Just so I'm clear, the answer would be  
10 40 percent African American, 55 percent if you include ethnic  
11 minorities including Hispanics?

12 THE WITNESS: Sir, if I may, I think it would be  
13 beyond African American; it would include other racial  
14 categories.

15 THE COURT: The 40 percent does?

16 THE WITNESS: Yes, sir.

17 THE COURT: Other racial categories being what?

18 THE WITNESS: So Asian or other multiracial  
19 categories.

20 THE COURT: Thank you.

21 You may continue, Mr. Carmichael.

22 Thank you, Secretary Miller.

23 BY MR. CARMICHAEL:

24 Q. Why is the diversity of the officer corps important to the  
25 Department of Defense?



1 A. I think certainly diversity overall is very important to  
2 the Department of Defense for many different reasons, but  
3 specifically the officer corps is of critical importance to us  
4 for many different reasons.

5 First and foremost, those are our senior leaders of the  
6 department. It's important that they understand how to  
7 appropriately work and communicate and lead a very diverse  
8 community. Part of that comes from learning from one another.

9 I think it's also critically important in terms of  
10 national security prerogatives. Increasingly, our objectives  
11 and our kinetic and tactical missions overseas are with our  
12 foreign partners. I think more than 70 percent of our most  
13 kinetic actions rely upon those partners, specifically in  
14 theaters of operation such as the India-Pacific region, such as  
15 our African region, such as our Southern Command. Each of  
16 those commands -- INDOPACOM, SOUTHCOM, AFRICOM -- rely upon our  
17 ability to work cooperatively and thoughtfully with our partner  
18 and allied nations to accomplish mission requirements.

19 It's also critically imperative for recruiting efforts,  
20 for retention efforts, development efforts. And then, overall,  
21 it just allows us to remain relevancy to the American people as  
22 well to our foreign partners. If we were a, you know,  
23 predominantly homogenous organization, I think that we would  
24 lack credibility with the American people and with many of our  
25 foreign partners.

1 Q. You mentioned that this is a national security concern.  
2 Is this a military judgment that this is a national security  
3 concern?

4 A. Absolutely. I would say that it's a military judgment  
5 formed over many years, over many senior leaders, political and  
6 uniformed, and I would say over multiple different  
7 administrations.

8 Q. Do you agree with this military judgment?

9 A. I do wholeheartedly.

10 Q. Have you had any personal experiences that have led you to  
11 believe that diversity furthers military readiness and unit  
12 cohesion, for example?

13 A. I do. When I first became a surface warfare officer, my  
14 first assignment on the USS Bunker Hill was a newly integrated  
15 ship. When I arrived, there was about four junior officers.  
16 We did not even have a senior female officer onboard. The Navy  
17 at that time typically did bring officers onboard before they  
18 integrated the enlisted ships. And I think, while that was a  
19 thoughtful plan, it wasn't as well thought out as it could be.

20 We arrived as 22-, 23-year-olds who, having been developed  
21 by the Naval Academy or ROTC units, did not fully appreciate  
22 that we would be such a minority population in a ship that was  
23 approximately 280 to 300 people. And we did experience  
24 individually and collectively some unique challenges in our  
25 abilities to conduct our jobs and responsibilities and to

1 obtain certain qualifications.

2 Q. What sort of challenges did you face on that first ship?

3 A. For example, I often found, as a division officer in the  
4 engineering department, that, you know, when I was giving  
5 orders for the day or I was setting objectives for the week, I  
6 often found that the men who worked for me would actively seek  
7 to have those orders reconfirmed by a chief that worked for me  
8 or by another officer.

9 I also found that, in obtaining certain qualifications --  
10 there's qualification books that we need to get filled out  
11 demonstrating a certain baseline knowledge in multiple  
12 different warfare areas before we could sit for a board to  
13 obtain our final warfare qualification exam -- that it was  
14 often difficult to get those exam books signed off by some of  
15 the officers or even enlisted that had those critical  
16 subspecialties.

17 They would either make it overtly difficult for us to  
18 achieve those qualifications or they would go out of their way  
19 to avoid taking a meeting with us or teaching us some of the  
20 same information that they would to others.

21 I had several men in my division who actively sought to  
22 transfer on another ship because either they or their spouse  
23 did not want them working for a woman. It became challenging  
24 in other ways, as we generally experienced certain levels of  
25 harassment.

1       There were unusual circumstances where we would find all  
2 of the -- all of the women's underwear in ship's laundry would  
3 be stolen. We'd have to actually send in our laundry in bags  
4 with our name on it to a group laundry area on the ship. And  
5 when they would be returned to us, all of our underwear was  
6 missing.

7       And then just generally there were occasions where, you  
8 know, people would overtly make sure that when they were  
9 passing you in the narrow hallways or going up certain ladder  
10 wells, they would make it obvious that they were, you know,  
11 crowding you or making you feel uncomfortable or, even in some  
12 occasions, inappropriately touching you.

13 Q.   And this was a ship, you said, with just four women on it?

14 A.   In the beginning. We were able to have a few more women  
15 over time. One of those women included a more senior supply  
16 officer that was eventually assigned to the ship, and that was  
17 very helpful in being able, I think, to model for us how to  
18 firmly set boundaries and how to appropriately address any sort  
19 of challenges that we were experiencing.

20 Q.   And then your second sea tour, you said, was a destroyer  
21 squadron; is that right?

22 A.   That's correct. So I was on Destroyer Squadron 28, which  
23 was embarked on the USS George Washington aircraft carrier,  
24 which, at the time, was an already fully integrated ship. And  
25 my experience there was vastly different than my first tour.

1 First and foremost, even my living quarters, I had eight  
2 women that lived in that same living quarters with me, which,  
3 you know, eclipsed the total number that we had on that first  
4 ship in the very beginning. It was both integrated for  
5 officers and enlisted.

6 And there was a greater sense of camaraderie. There was  
7 less overt harassment or challenges in getting our job done.  
8 And it was just a wholly different experience.

9 While I'm very proud of my tour on my first ship and it  
10 eventually did, over time, get better, my experience with the  
11 destroyer squadron and on the integrated aircraft carrier was  
12 what I would consider a more successful tour in many ways  
13 because it just lacked the challenge of the day-to-day thinking  
14 through how do I need to accomplish my mission? What kind of  
15 challenges may I experience today? How do I go about  
16 accomplishing those if I experience those barriers?

17 And particularly in a way that didn't isolate or further  
18 alienate myself or the other women on board while still seeking  
19 to accomplish our personal and professional goals.

20 **Q.** So I take it you would say the second ship operated much  
21 better?

22 **A.** I would say that the second ship operated with just a  
23 greater degree of professional efficiency. And some of those  
24 underlying challenges did not interrupt kind of the mission  
25 requirements of the day.

1 Q. Plaintiff previously identified special forces units as an  
2 example of why racial and ethnic diversity is irrelevant to the  
3 armed forces because special forces tend to be largely White.

4 Does DoD share this view?

5 A. No. I mean, I think that there's often an imprecise view  
6 of what special forces mean and what they are. I think that  
7 it's largely formulated upon this narrow view that's often  
8 projected in the media or in Hollywood that it's this small  
9 group of individuals that are operating fairly independently.

10 In my experience, that is not accurate. Special forces  
11 missions inevitably are thoughtfully planned and executed  
12 across a wide range of critical skills and communities to  
13 include cryptologists, linguists, robotics specialists,  
14 aviators, a wide range of disciplines, all of which have a  
15 greater degree of diversity in them than we may see in some of  
16 those traditional special forces units.

17 If there's a perception that our special forces units  
18 being the most elite or the most successful, it is wholly  
19 dependent on the support that they receive from the services  
20 and from those critical specialty areas.

21 Q. I want to pull up DX152.

22 Are you familiar with this document, Ms. Miller?

23 A. I am.

24 Q. What is this document?

25 A. So this is a research study that was performed to look at

1 a way of reducing barriers to minority participation in elite  
2 units. And elite units typically refers to those special  
3 forces units.

4 Q. Could we turn to page 5 of the PDF.

5 And there it says that this was -- this was conducted as  
6 part of the FY2021 National Defense Authorization Act. Does  
7 that mean that Congress required this study?

8 A. That's correct. There's a number of studies that the  
9 department does, either by its own initiation or because we've  
10 been directed to by Congress. In this case, this particular  
11 study was directed in the 2021 National Defense Authorization  
12 Act.

13 Q. So is Congress directing this because they recognize that  
14 the lack of ethnic and racial minorities in special forces is a  
15 problem?

16 A. Absolutely. Being a part of this study and the early work  
17 of it coming together, we met with members of the congressional  
18 committees, especially the professional staff members, to have  
19 a clearer understanding of what their objectives were.

20 And what they were seeking to do is to better understand  
21 where barriers may exist, either real or perceived, to growing  
22 a greater percentage of diversity within this community because  
23 there was a recognition of the mission imperative that we do  
24 so.

25 Q. What does it mean when DoD commissions a study like this?

1 A. What that means, we commission a study, is it generally  
2 means, just as in this case, we work with one of our federally  
3 funded research partners such as, in this case, the Institute  
4 for Defense Analysis or RAND or the Center for Naval Analysis,  
5 to be able to come in and objectively conduct a study and work  
6 with us to source information and data. And then they conduct  
7 an independent analysis and provide that to us.

8 Essentially, the goal here is to be free from bias.

9 Q. Does Special Operations Command also believe that there  
10 needs to be greater racial and ethnic diversity in special  
11 operations units?

12 A. Absolutely. And you certainly see that, as espoused by  
13 our senior leaders responsible for special forces operations,  
14 both our assistant secretary of defense for special operations  
15 and low-intensity conflict, that's ASD S0/LIC -- they're  
16 responsible for broadly overseeing special forces throughout  
17 all of the military services -- as well special operations  
18 command, SOCOM, the leadership. Both officer and enlisted, and  
19 then civilian leadership, have jointly published policy and  
20 plans that set a plan forward to grow the diversity within that  
21 force.

22 That diversity largely being recognized as demographic  
23 diversity, cognitive diversity, and experiential diversity in  
24 large part because of the kinetic and geographic requirements  
25 that they must meet.



1 Q. What do you mean by "the kinetic and geographic  
2 requirements that they must meet"?

3 A. So I mentioned before that, particularly within this  
4 community and the special operations and low-intensity conflict  
5 engagements, that we rely upon the ability to be adaptable, to  
6 be flexible, to be creative, especially in the moment, in  
7 solving challenging operational experiences in executing  
8 mission requirements.

9 It relies upon our ability to strongly work with partners.  
10 And it also just recognizes that, as our smaller pool of  
11 eligible Americans continues to shrink, that traditional  
12 population that they pulled from post-World War II and truly  
13 even in the 9/11 era is growing smaller and less qualified.  
14 And they need to expand the population from which they are  
15 seeking to bring in to help them accomplish these missions.

16 I would say that some specific examples are it is helpful  
17 to have certain demographic representation when trying to  
18 accomplish missions such as insertion, infiltration. You can  
19 imagine where that could come into play in a situation where  
20 we're infiltrating Boko Haram or we're trying to conduct a  
21 low-intensity conflict mission in, you know, a Indo-Pacific  
22 theater.

23 We need that shared understanding of regional expertise,  
24 language expertise, and cultural expertise in order to  
25 essentially undermine the enemy and be successful in meeting

1 those mission requirements.

2 Q. Can the Navy just take somebody from, say, the surface  
3 warfare community and move them over to be a special operator?

4 A. No. We grow our special operators just in the same manner  
5 that we grow talent within those other warfare disciplines. It  
6 starts with being able to successfully complete the initial  
7 entry phase, and then we add additional skills, knowledge,  
8 abilities, and joint operation qualifications over the course  
9 of time.

10 Q. I want to turn to page 57 of the -- and I think 58, the  
11 two of this study. Do you see where at Table 18 it says some  
12 of the barriers to and enablers of recruitment of these units?

13 What were some of the barriers of the study?

14 A. As you see here in Table 18 within this study, there's a  
15 lack of awareness and interest. We have a hard enough time  
16 with young Americans even understanding what the difference  
17 between an officer and an enlisted service member are, let  
18 alone what the specific roles and responsibilities are  
19 performed in special forces.

20 So we rely upon our recruiters to be able to educate them  
21 and to grow that interest, but it's a challenge. And part of  
22 that challenge, as this research and others has indicated to  
23 us, is that, again, they too share that largely media- and  
24 Hollywood-formed view of what special forces are. And they  
25 don't necessarily see themselves represented and have concerns

1 about their ability to succeed.

2 One of the other areas that is cited here is, you know,  
3 competing recruitment priorities. Our recruiters are trying to  
4 recruit to a broad set of different demand signals and  
5 requirements. Because the special forces missions inevitably  
6 require a higher degree of certain qualifications, it is often  
7 difficult to find those qualifying recruits.

8 And we often find that we need to spend a lot of time with  
9 them to develop their interest and to reassure their  
10 influencers such as parents and teachers, religious leaders  
11 that they may ultimately be successful in some of those  
12 communities.

13 I would say that this also cites to the fact that, again,  
14 we just generally see less representation in the community. So  
15 being able to respond to unique concerns by women and  
16 minorities who may be interested in these areas takes a little  
17 bit of extra work in order to be able to connect them sometimes  
18 to someone who has lived that experience and may be able to  
19 more practically and successfully address any concerns they  
20 have.

21 I would also say that there's just a lot of concern about  
22 the ability to meet the requirements. Certainly, using Navy as  
23 the example in our SEAL community, it requires a lot of  
24 experience with swimming and aquatic skills. Inevitably, we  
25 find that within minority-serving areas that there's just less

1 opportunity to learn how to swim and how to swim well. We can  
2 teach them how to do that, but that's not well understood.

3 And so we have to spend a lot of time just overcoming some  
4 of those initial concerns in terms of ability to meet  
5 qualifications, ability to succeed, and ultimately to have a  
6 successful career.

7 Q. What's DoD and the Navy doing to try to overcome some of  
8 those barriers?

9 A. We are doing a lot of different things, either the  
10 services at their level or special operations community. We  
11 have a lot of recruiters that are now paired with a special  
12 forces reach-back capability so that they can immediately  
13 connect the individual that they're working with to that person  
14 so that they can have a more realistic conversation of what the  
15 expectations are. We have developed in our training and  
16 entry-level schoolhouses learn to swim and then advanced swim  
17 capabilities.

18 We've also learned that it's not helpful to necessarily  
19 have some of those initial entry requirements in the beginning  
20 of the training phase. It's better to move them to the end of  
21 the training phase, where they've had a greater opportunity to  
22 enculturate and to learn certain skills.

23 We've also developed and incorporated nutrition  
24 specialists and physical fitness specialists. We recognize  
25 that different populations such as men and women build muscle

1 differently and may respond to different nutritional needs.

2 And so we have developed separate developmental programs that  
3 are just responsive to those physiological differences.

4 We have also developed specific recruiting and marketing  
5 content in order to be able to better enable an understanding  
6 of what special forces are. And there's just a wide range of  
7 other developmental and mentorship programs that occur once  
8 you're in service.

9 Q. Does a diverse officer corps in special forces, does that  
10 help recruit new special forces members?

11 A. Certainly. Again, I think having a greater  
12 representation, especially being able to show successful  
13 stories, we have found goes a long way to, again, addressing  
14 their initial concerns and then helping to build that  
15 self-efficacy that I mentioned.

16 Q. All right.

17 We can pull that down, Brian.

18 MR. CARMICHAEL: I'd like to admit DX152 into  
19 evidence.

20 THE COURT: That would be so admitted. Under the  
21 rule, it was already admitted once it went up on the screen.  
22 Thank you.

23 BY MR. CARMICHAEL:

24 Q. Okay. I'd like to continue talking about retention. How  
25 would you assess the overall state of retention for Naval

1 Academy graduates?

2 A. Generally, what we find, and as we looked at the research  
3 and the data before we broke for lunch, is that we're seeing  
4 retention improvements over time.

5 Q. Why do you think officer retention has been improving over  
6 time?

7 A. I think generally that we have done a good job in working  
8 with our officer cohorts in coming to a greater appreciation  
9 for the value of service and how the tangible and intangible  
10 benefits of service especially can compare to opportunities  
11 outside of the service.

12 Our pay and compensation total program is actually much  
13 higher, at the essentially 90 percentile in some cases,  
14 compared to civilians with equivalent education and skills and  
15 training.

16 We also find that there's an appreciation for the mission  
17 and the unique opportunities to develop skills and formal  
18 education opportunities and then certainly the leadership  
19 opportunities that come with retention over time.

20 Q. Are there specific challenges to officer retention that  
21 DoD has identified?

22 A. Certainly there are certain unique areas across a broad  
23 organization where we see some softening in retention. For  
24 example, our air defense community within the Army is  
25 experiencing very high operational tempo and personal tempo.

1 And so it's not surprising that we start to see some softening  
2 in those areas where we see repeated deployments over and over  
3 again.

4 We have also observed, just within, you know, different  
5 groups or populations, that there's different patterns of  
6 retention. We do a fairly good job of recruiting women, but  
7 then we see some retention challenges over time. Particularly  
8 in the midgrade or field grade officer level, we typically find  
9 that's when a lot of women start having families and having  
10 children, and they don't always find that military service and  
11 having a family are compatible. We've done a lot in that area  
12 to better balance and respond to those concerns.

13 We've also seen in our minority populations -- you know,  
14 Black and Hispanic in particular, we've seen strong retention  
15 over time, but we haven't necessarily seen corresponding  
16 promotion rates. And we've done a lot to understand why that  
17 may be.

18 We've talked about that a little bit in terms of  
19 understanding some of those factors and how we've responded to  
20 that with respect to mentoring and coaching and development  
21 opportunities to include a better and more nuanced  
22 understanding of which pipelines may lead to greater success.

23 And we've done a lot to look at geographic stability,  
24 particularly within our various different platforms and  
25 communities. We do see that more women and minorities may

1 migrate to certain communities that they believe are more  
2 receptive to their service.

3 A good example of that is we've seen more women and  
4 minorities migrate towards the P8 community. That's our  
5 submarine hunters, as I mentioned before. They're typically  
6 located in two different locations in the country. And we take  
7 a hard look at why they may be going to those areas.

8 Is it solely due to geographic stability? Is it a dynamic  
9 within the community that's not represented in other  
10 communities such as fixed-wing or fighter squadrons? And if  
11 there's elements that we can respond to or incorporate in other  
12 units, we seek to do so.

13 Q. I want to break that up just a little bit in maybe two  
14 parts.

15 So what are the challenges that you see kind of -- you see  
16 across all officers for retention?

17 And then after that I'll ask about minority officers.

18 A. I mean, where we see kind of patterns of retention, again,  
19 is overall very strong. But where we have some concerns are in  
20 those critical specialty areas that are frequently called upon  
21 repeatedly to respond to mission requirements. And we want to  
22 make sure that, in those areas, we are responsive to what those  
23 concerns are in developing, you know, real measures that  
24 intervene.

25 We also want to understand where there may be real or



1 perceived barriers to success and where we may need to do so  
2 through policy or programs, be responsive to those concerns.

3 Q. What sort of policies and programs do you -- has DoD  
4 introduced to be responsive to some of these concerns?

5 A. I think a good example looks actually at some of what I  
6 mentioned about women's retention. I mentioned that we were  
7 frequently finding that we were seeing drop-offs in women's  
8 retention at that midgrade career field, usually at the 03  
9 lieutenant or 04 lieutenant commander level.

10 In response to that, what we developed with Congress's  
11 support was a program called the Career Intermission Program  
12 that allowed any individual to actually take a pause in their  
13 military service, essentially go on a sabbatical, and then  
14 return a few years later where we adjusted their date of rank  
15 and their year group so that they could more appropriately  
16 compete with others that had continued on in service.

17 That was a particular program where, quite frankly, when  
18 we rolled it out, we expected a fairly gender-specific response  
19 to the program. Over time, that hasn't actually borne out.  
20 It's been very gender-neutral.

21 And so that's been interesting is that was a program that  
22 we developed in response to certain concerns that we saw within  
23 a group, but we actually found it was beneficial to the entire  
24 department, in this case, the Navy, as we started to respond to  
25 more millennial concerns and certain dynamics such as dual

1 households with military spouses who were in other communities  
2 that were less able to kind of move to different geographic  
3 regions.

4 Q. You mentioned earlier that there were some specific  
5 concerns with minority officers sometimes picking a particular  
6 platform that may not lead to promotion.

7 Can you expand a little bit more on that.

8 A. I can. I think I mentioned the P8 community as an  
9 example. Within the aviation community generally we see  
10 patterns of promotion that are stronger coming out of those  
11 fighter squadrons and fighter communities than we see from  
12 helicopter rotary wing or in this case the P8 communities.

13 And so we do a lot both in the development of those  
14 midshipmen to help them understand what the opportunities may  
15 be and then address, as I said, any concerns that they may have  
16 particularly through mentoring and coaching or connecting them  
17 with somebody who's already in the community.

18 Then, where we can, we try to develop programs that kind  
19 of respond to interests and concerns in other communities. It  
20 may not be practical that we can limit all fighter squadrons to  
21 predominantly two areas of the country in the way that we have  
22 with the P8 community, but to the extent there's concerns about  
23 individuals' ability to be successful, we can do more there,  
24 particularly with coaching, mentoring, and development.

25 Q. Have you seen anything like that in the shipboard

1 community for people picking specific ships if they're SWOs?

2 A. We do. Frequently, we see that there's more opportunities  
3 for senior leaders who come out of the cruiser and destroyer  
4 communities than we necessarily see coming out of the  
5 amphibious or smaller ships opportunities, such as minesweepers  
6 or coastal patrol craft, some of those opportunities.

7 And that's not always well understood. Just using myself  
8 as an example, my father was a surface warfare officer. I grew  
9 up with, at the kitchen table, having conversations about what  
10 a successful surface warfare career looks like and what it  
11 includes in terms of assignments and moving.

12 If you're not living that and getting that feedback, say,  
13 from, you know, influencers and coaches and mentors, you might  
14 not know that it's more advantageous to take certain jobs than  
15 others.

16 An example of this is my last military assistant, who is a  
17 submarine officer. When he rotated off of submarines, he  
18 frequently took opportunities that took him back to pursue  
19 higher education. He went to Harvard. He went to Johns  
20 Hopkins. That ultimately did not serve him well in being able  
21 to compete for command because the community generally viewed  
22 that he hadn't done other tours that would develop his warfare  
23 capabilities.

24 He very readily, on receiving this information, said, "I  
25 would have liked to have known that years ago; I would have

1 made different choices." And I think that just speaks to the  
2 importance of making sure that we're educating and coaching  
3 particularly those that may have no prior history of military  
4 service so that we're setting them up for success long term.

5 **Q.** Does having a more diverse officer corps benefit in  
6 allowing people to know about these opportunities and  
7 communities?

8 **A.** Absolutely. I mentioned before that I think it's  
9 important to have strong mentors and coaches and ways to get  
10 information about service. And I don't think that's  
11 necessarily limited just to kind of in-group dynamics. I think  
12 you can have mentors and coaches and we can have development  
13 programs that capitalize on senior leaders' strengths across  
14 all demographics.

15 But, as research shows, there is something to be said  
16 about being able to respond to unique concerns from minority  
17 populations and that it's often a more natural conversation to  
18 be able to talk with someone who maybe have experienced some of  
19 the same challenges that you have.

20 I don't even think that that's limited to, say, the same  
21 demographics. You don't necessarily need to have a Black or  
22 African American submarine officer mentor another. There's  
23 shared experiences, as I have found and as research supports,  
24 for minority communities writ large. So there's value in  
25 growth amongst women and racial and ethnic minorities generally

1 because it benefits everyone.

2 Q. I'd now like to transition a bit to recruiting. When DoD  
3 refers to recruiting, what does that mean?

4 A. Generally that's the process by which we go about  
5 developing interest in military service.

6 Q. Why is recruitment important to the department's national  
7 security interests?

8 A. Certainly we have been an all-volunteer force for  
9 approximately the last 50 years. So our success in meeting our  
10 in-strength requirements and therefore our ability to support  
11 national defense priorities is inherently tied to our ability  
12 to successfully recruit each year and each generation of  
13 service.

14 I don't think it's a secret that we've had a challenge  
15 with that over the last few years coming out of COVID. And  
16 that has absolutely led to conversations within the department  
17 of how we evolve recruiting policies and practices and how do  
18 we support operational mission requirements.

19 Q. You mentioned some current recruiting challenges. Can you  
20 expand a little bit more about that. What are some of the  
21 current recruiting challenges that the department faces?

22 A. I would categorize that in a couple of different ways.

23 I would say one is the eligibility challenge that we  
24 talked about earlier, that 23 percent generally of the American  
25 youth population, 17 to 24, who are even eligible to serve

1 without a waiver of some kind.

2 I think we also have a challenge with propensity, or the  
3 general interest of young people to serve in the military. And  
4 that extends to influencers' willingness to recommend military  
5 service to the youth in their lives. Increasingly, we've seen  
6 a downward trend in all of those areas.

7 Q. Is DoD relying on certain studies to help inform its  
8 decisions on recruiting?

9 A. We have robust divisions that look at market analysis.  
10 And they do some of the work that we talked about before in  
11 being able to provide insights into eligibility populations as  
12 well as propensity dynamics. And then they do a lot of work in  
13 taking a look at how do we successfully recruit overall, but  
14 then how do we recruit to certain mission requirements such as  
15 special forces.

16 And then they also take a look at what approaches and what  
17 advertising and marketing strategies will respond best in  
18 different groups or different individuals of interest. That is  
19 a common practice throughout any commercial marketing and  
20 advertising firm, and we are no different.

21 In an increasingly fractured and segmented media market,  
22 you have to be very nimble and adept at being able to tailor  
23 your messaging to individual groups such that they will respond  
24 favorably to that content. It's very difficult in today's  
25 marketing and advertising landscape to connect with youth at

1 all.

2 In an era where we -- most of us here in the courtroom  
3 today grew up with maybe a handful of television channels,  
4 youth of America today are accessing hundreds of different  
5 segmented marketing channels. And they're also the group or  
6 demographic that most often employs ad blockers.

7 So our ability to actually connect with them to address  
8 any sort of misperceptions that they have is, one, difficult,  
9 and two, brief. We have to connect with them with content that  
10 is going to immediately resonate and interest them. And that  
11 acknowledges that we need to do that in many different ways.

12 **Q.** What sort of data does DoD rely on to inform its  
13 recruiting judgments?

14 **A.** As I mentioned, we look at demographic data; we look at  
15 eligibility data; we look at marketing success in terms of,  
16 like, ad recall, number of clicks, how long they stay on a  
17 page. We look at ultimately how that ties to a developed  
18 recruit, whether that recruit continues the process through to  
19 a contract. We take a look at what the qualification levels  
20 were and how many waivers we needed to consider for  
21 individuals.

22 And then, ultimately, we take a look at how successfully  
23 are we matching the individuals that we're bringing in to the  
24 mission requirements that we have and the jobs we have.

25 **Q.** Are there specific recruiting challenges that DoD has

1 found impacts potential minority candidates?

2 A. Yes. We do see group differences amongst different  
3 populations. Generally among a whiter Caucasian population, we  
4 find lower propensity or lower interest but a higher degree of  
5 qualifications writ large. And we find amongst minority  
6 populations, we generally find a higher degree of propensity  
7 and a lower degree of qualification.

8 That's really important to us because at the end of the  
9 day everyone who comes into the United States military must  
10 meet a baseline level of qualification, whether you're enlisted  
11 or officer.

12 Q. How does having a diverse officer corps positively impact  
13 recruiting?

14 A. Again, this goes to our ability to successfully model  
15 outcomes, you know, positive outcomes over time to help improve  
16 and grow that efficacy.

17 I think it helps to provide a realistic example of what  
18 life in the military looks like as opposed to the  
19 misperceptions that are often formulated by the media and by  
20 well-intentioned but perhaps not well-knowledged influencers.

21 It's important that we have the ability to understand any  
22 sort of critical challenges that they may have experienced in  
23 the initial entry phase such that we can, again, take a look at  
24 any real or perceived barriers that may exist.

25 **MR. CARMICHAEL:** I have no further questions.



1           **THE COURT:** Thank you, Mr. Carmichael.

2           Cross-examination, Mr. Strawbridge.

3           **MR. STRAWBRIDGE:** Just a brief moment while I get set  
4 up with the witness.

5           **THE COURT:** Take your time. Take your time.

6                           **CROSS-EXAMINATION**

7           **BY MR. STRAWBRIDGE:**

8           **Q.** Good afternoon, Secretary Miller.

9           **A.** Ms. Miller is fine.

10          **Q.** Good afternoon, Ms. Miller.

11          You'd agree with me that you are not an expert on the  
12 academies' admissions process?

13          **A.** I am not an expert on the academies' admissions process,  
14 although I am generally an expert in the management of the  
15 academies and policy pertaining to the academies.

16          **Q.** That's helpful because I have some questions for you on  
17 that later.

18          You have no responsibility for setting the policies at the  
19 Naval Academy admissions office, correct?

20          **A.** I do not.

21          **Q.** Including you have no responsibility for setting their  
22 policies with respect to the use of race, correct?

23          **A.** I do not.

24          **Q.** You have never worked in the Naval Academy admissions  
25 office?

1 A. I have not.

2 Q. You've never sat on the Naval Academy's admissions board?

3 A. I have not.

4 Q. You have no idea as to what the relative weight  
5 race/ethnicity has in the Academy's admissions process,  
6 correct?

7 A. I would disagree with I have no idea. I generally  
8 understand that there's a limited consideration of race,  
9 ethnicity, and gender during certain elements of the Academy  
10 admissions process.

11 Q. Do you understand this case to have anything to do with  
12 gender preferences?

13 A. I think that it's an important component to include, given  
14 the previous statement I made that there are shared experiences  
15 that lead to positive outcomes for recruiting and retention.

16 Q. My question is do you think this case challenges gender  
17 preference at the Naval Academy?

18 A. Not directly.

19 Q. Do you think it indirectly does?

20 A. I think that it does call it into question, yes.

21 Q. On what basis is that?

22 A. Because I think that in generally questioning the relevant  
23 importance of considering race, ethnicity, or gender in the  
24 Academy admissions process, it fails to recognize the  
25 importance of minority participation in the military overall.

1 Q. Given your lack of information about the Academy's  
2 admissions process, you don't have any idea as to how many  
3 graduates of the Naval Academy in any given year were admitted,  
4 in part, because of their race, correct?

5 A. I do not.

6 Q. So none of your testimony today about the history of Naval  
7 Academy graduates has any basis with respect to how those  
8 numbers would have changed if race was not used, correct?

9 A. I believe my testimony goes today to the compelling  
10 government interest that the department has in maintaining,  
11 sustaining a diverse officer corps, of which the Naval Academy  
12 contributes significantly.

13 Q. You do not know how many graduates of the Naval Academy in  
14 any given year would have still been admitted to the Naval  
15 Academy if it did not use race, correct?

16 A. I do not know the precise answer, but I know that it is a  
17 consideration.

18 Q. But you don't know how many graduates would have gotten in  
19 if race was not a factor, correct?

20 A. Correct.

21 Q. A month ago you met my friend Mr. McCarthy at the  
22 deposition?

23 A. Yes.

24 Q. Back then, you could not even say what the racial  
25 demographics of the incoming class of the Naval Academy were,

1 correct?

2 A. Generally, I know it increases approximately every year;  
3 but, no, I don't know the specific percentages. No.

4 Q. None of the 24 charts that were included in your expert  
5 disclosure, many of which you discussed with Mr. Carmichael  
6 today, none of those list any information about officers who  
7 came into the Navy through Officer Candidate School, correct?

8 A. No. Those charts were solely focused on the Naval Academy  
9 graduates until we got to O6 information, which may include  
10 some other graduating sources.

11 Q. Do any of the charts include information about officers  
12 from ROTC?

13 A. No.

14 Q. You would agree with me that the vast majority of officers  
15 who enter the Navy come through channels other than the United  
16 States Naval Academy?

17 A. If you're speaking broadly, yes. The Naval Academy  
18 represents 20 percent, but an outsized percentage of  
19 unrestricted line officers.

20 Q. Well, let's just take this piece by piece. 20 percent of  
21 the Navy's total officers come from the Naval Academy, correct?

22 A. Correct.

23 Q. Which means 80 percent of them come from ROTC or OCS?

24 A. Correct, or enlisted-to-officer commissioning programs.

25 Q. Correct. That's a relatively small number, right?

1 A. Yes, relatively small.

2 Q. And with respect to the unrestricted line, the Naval  
3 Academy accounts for about 28 percent of unrestricted officers  
4 who enter the Navy every year?

5 A. Correct.

6 Q. So the other accession sources count for 72 percent?

7 A. Correct.

8 Q. When you prepared these charts as part of your disclosure,  
9 why didn't you include those accession sources?

10 A. As this case is primarily focused on the Naval Academy, we  
11 thought it was most appropriate to provide data to the Court  
12 that specifically looked at their retention patterns and  
13 representation in senior grades over time.

14 Q. You are aware that the asserted interest in this case is  
15 diversity in the naval officer corps at large, correct?

16 A. My understanding is that this case goes to the matter of  
17 considering race and ethnicity specifically in the Naval  
18 Academy admissions process and calls into question the validity  
19 of the need for a diverse officer corps.

20 Q. My question is do you understand that the government's  
21 justification in this case is to increase diversity in the  
22 officer corps as a whole?

23 A. Correct, of which the Naval Academy significantly  
24 attributes.

25 Q. Yes. About a quarter or so compared to the other

1 accession sources, right?

2 A. True. But I think we also spoke about how influential  
3 that population can be as evidenced by their participation in  
4 senior ranks and senior combatant platforms.

5 Q. Who is the current chief of naval operations?

6 A. Lisa Franchetti.

7 Q. Did Lisa Franchetti graduate from the United States Naval  
8 Academy?

9 A. She did not.

10 Q. Who is Rick Cheeseman?

11 A. He is the chief of naval personnel.

12 Q. Would that make him approximately the third-highest  
13 ranking officer in the Navy?

14 A. Not necessarily.

15 Q. What rank would you give him in the naval ranking?

16 A. It's impossible to categorize where he ranks amongst all  
17 three- and four-star officers.

18 Q. He's the deputy CNO?

19 A. He is one of many.

20 Q. Did he go to the Naval Academy?

21 A. I do not know.

22 Q. Did you present any charts or information about the  
23 senior-level officers that run the Navy today and what their  
24 accessions sources were?

25 A. We did not.

1 Q. You yourself came from the ROTC, correct?

2 A. I did.

3 Q. You agree that the ROTC is a critically important pipeline  
4 that feeds into the officer corps?

5 A. I do. But I would also say that in my early initial  
6 accession experiences, particularly at surface warfare  
7 engineering school, that my Naval Academy colleagues, to some  
8 degree, had a better understanding of some of those fundamental  
9 principles than I did by virtue of the fact they had more  
10 training and education than I did at a baseline level.

11 Q. You agree that Officer Candidate School is a critically  
12 important pipeline that feeds into the officer corps?

13 A. It is.

14 Q. Do you think that your experience applies to every ROTC  
15 officer who entered the Navy?

16 A. Based upon the fact that it's a standardized curriculum,  
17 it reasons that, yes, we all have a certain degree of knowledge  
18 and expertise as we enter into the military. By virtue of  
19 attending an Academy gives an advantage in terms of some of the  
20 greater appreciation of those knowledge, skills, abilities,  
21 traditions, and leadership dynamics.

22 Q. Is Naval Academy graduation a requirement for promotion to  
23 any rank in the Navy?

24 A. It is not.

25 Q. And you will agree that the Navy does not use race in

1 Officer Candidate School admissions?

2 A. Correct.

3 Q. You agree that the Navy does not use race in ROTC  
4 admissions and scholarships?

5 A. Correct.

6 Q. And that is, in part, because the Navy has a policy of an  
7 equal playing field as service members come into the military?

8 A. That's correct.

9 Q. And you think that's a sound policy, right?

10 A. I do.

11 Q. And one of the reasons you think that's a sound policy is  
12 because you believe that there is value in meritocracy?

13 A. I do believe there is value in meritocracy.

14 Q. Which is why race is not used in promotion or assignment  
15 throughout an officer's career?

16 A. Generally, no.

17 Q. By naval policy, right?

18 A. Correct.

19 Q. Are there specific examples where the naval policy allows  
20 race to be used in assignment or promotion?

21 A. In certain assignments, it is -- it could be a dynamic  
22 that we take into consideration. For example, my previous  
23 reference to a successful operation where we're infiltrating  
24 Boko Haram or we need to potentially gather intelligence from  
25 women. There are several examples with female engagement teams



1 and other special forces missions where we have deliberately  
2 considered whether or not a certain individual would give us a  
3 competitive advantage by inclusion in a certain unit.

4 Q. What percentage of naval missions do those examples  
5 constitute?

6 A. I don't understand your question.

7 Q. Like, how often does that happen?

8 A. That -- on the operational side, it is something that  
9 happens frequently.

10 Q. How often does the Navy approve the use of race for  
11 assigning a particular officer to a particular job at the Navy?

12 A. That's not quantified. It's not something that we keep  
13 track of specifically, but it is something that we may take  
14 into consideration if it's a tactical advantage.

15 Q. Do you take it into account in promoting people generally  
16 through the officer ranks?

17 A. No. But that's different than the question that you  
18 asked, which was about assignment.

19 Q. I'm asking you is it typical when you assign officers to  
20 different jobs as they make their way through promotion?

21 A. It is not typical, but in some instances it may be  
22 appropriate.

23 Q. Is that a practice that's being challenged in this  
24 litigation?

25 A. Not specifically, but you did ask me the question.

1 Q. When the Department of Defense is considering the  
2 diversity of the officer corps, it looks at overall minority  
3 representation, right?

4 A. Correct.

5 Q. Not at the specific individual racial groups?

6 A. In what way? I think I've given a couple of examples  
7 where we do look at demographic or group differences.

8 Q. For the DoD's interest in this case, their interest in a  
9 diverse officer corps, is it about the total number of  
10 minorities or does it matter to the Department of Defense the  
11 number of minorities within each specific racial and ethnic  
12 group?

13 A. Both. We look at the overall population and how that  
14 generally represents minorities inside of the service or inside  
15 of the department. And then we also are mindful where we might  
16 see significant differences among populations, such as the  
17 example that was previously used where we had a larger  
18 population of Asian Americans included in the 2022 and 2023  
19 groups at the Naval Academy, but yet we see much smaller  
20 representation at a senior officer level.

21 Q. We were talking earlier about the deposition that you had  
22 with my friend Mr. McCarthy.

23 A. Yes.

24 Q. I'm going to hand you a copy of the transcript of that  
25 deposition.

1 I'm going to ask you to turn to page 67, line 19.

2 At the bottom of page 67:

3 "Q. Is the DoD's interest in a diverse officer corps, is  
4 it about the total number of minorities or does it matter  
5 to DoD the number of minorities within each specific  
6 racial and ethnic group?

7 "A. Generally, we're looking for representation broadly,  
8 not specifically within minority categories, no."

9 Did you give that testimony at your deposition?

10 A. I did. I also included the word "generally."

11 Q. So, generally, the DoD is not looking specifically within  
12 minority categories, no?

13 A. We generally look at the overall population and, as  
14 appropriate, we will look within different groups.

15 Q. You mentioned examples from Harvard and MIT on your direct  
16 exam?

17 A. I did.

18 Q. What happened to Asian enrollment at MIT this year?

19 A. Excuse me?

20 Q. What happened to Asian enrollment at MIT this year?

21 A. I think that there was some general improvements in Asian  
22 enrollment.

23 Q. How many points did it go up?

24 A. That, I don't know.

25 Q. You don't know?

1 A. No, I don't know specific number.

2 Q. You've not disclosed any data to us with your opinion as  
3 to how the SFFA decision affects ROTC accessions at all the  
4 various ROTC efforts across the country, you have?

5 A. What I did answer was that we -- something that we are  
6 paying attention to and we're generally mindful of the media  
7 reports of the most recent outcomes. And we understand, since  
8 we are limited in our ability to select candidates from those  
9 universities where we have ROTC units, it reasons that we may  
10 be more limited in who eventually we will be able to select.

11 Q. Ms. Miller, my question is did you disclose with your  
12 expert disclosure in this case any information about how the  
13 SFFA decision would affect ROTC accessions?

14 A. Did I get a specific question about that in deposition?  
15 Is that what you're asking?

16 Q. I'm asking, you remember that you filed an expert  
17 disclosure in this case --

18 A. Yes.

19 Q. -- about the topics you're going to testify on --

20 A. Yes.

21 Q. -- in reference to the number of documents?

22 A. Yes.

23 Q. And you included all the charts that you looked at today?

24 A. Correct.

25 Q. The charts that only include information about the Naval

1 Academy officers and not ROTC and OCS officers?

2 A. Correct.

3 Q. Does any of that information include any analysis as to  
4 what would happen with the ROTC accessions as a result of  
5 Students for Fair Admissions decision?

6 A. Not specifically, but I was asked the question.

7 Q. Have you disclosed any data showing the racial diversity  
8 of ROTC accessions in states in America that have long  
9 prohibited the use of race in college admissions?

10 A. No.

11 Q. One of the documents that you indicated you're relying on  
12 in your report is the MDLC report, correct?

13 A. Yes, the Military Leadership Diversity Commission report.

14 Q. What is the MDLC report?

15 A. That was a commission established by Congress to examine  
16 the general representation and service of minorities and women  
17 in the military services.

18 Q. That report -- do you know when that report was completed?

19 A. I think approximately 2011.

20 Q. So 13 years ago?

21 A. Correct.

22 Q. The report made a bunch of recommendations?

23 A. It did.

24 Q. Including recommendations as to what could be done to  
25 increase diversity in the officer corps?

1 A. It did.

2 Q. Did it include recommendations about steps that the ROTC  
3 and the Naval Academy could take?

4 A. I believe it did, yes, as I recall.

5 Q. All right. Why don't we look at a few of those examples.  
6 Can you see the report on your screen?

7 A. I can.

8 Q. There's a copy in the notebook if you need it.

9 Just to refresh your recollection, the cover letter on  
10 page 3 is dated 2011; is that right?

11 A. Correct.

12 Q. Is that the date when the report was issued?

13 A. Yes, 2011.

14 Q. I'll take you to page 79. I just have some questions for  
15 you.

16 You see the section here that talks about creating,  
17 implementing, and evaluating a strategic plan for outreach and  
18 recruiting from untapped location and underrepresented  
19 demographic groups?

20 A. I'm sorry. I'm going to ask you to repeat the question  
21 since I was turning to the page.

22 Q. Yeah. Do you see the section that says, "Create,  
23 implement, and evaluate a strategic plan for outreach and  
24 recruiting for untapped locations and underrepresented  
25 demographic groups"?

1 A. Again, I apologize. I was looking at the actual page  
2 number in the report. You were referencing the DX number; is  
3 that correct?

4 Q. That is correct.

5 A. Okay. I apologize for a third time. If you could please  
6 kindly repeat yourself.

7 Q. Do you see the section that begins on that page, talking  
8 about "Create, implement, and evaluate a strategic plan for  
9 outreach and recruiting from untapped location and  
10 underrepresented demographic groups"?

11 A. I do. Thank you.

12 Q. The first one refers to "Explore recruiting at two-year  
13 colleges"?

14 A. Correct.

15 Q. It notes that two-year college may represent a rich market  
16 for ROTC recruits?

17 A. Correct.

18 Q. What has the Navy done to explore options of recruiting  
19 from two-year college in the last 13 1/2 years?

20 A. The Navy, as well as other services, have all made an  
21 effort to expand recruiting initiatives at two-year colleges  
22 with programs to be able to connect to those that are  
23 participating in those schools and help bridge them to ROTC  
24 units in areas that they may be interested in.

25 Q. How many programs does the Navy have?

1 A. I don't know specifically.

2 Q. How many two-year colleges has it partnered with?

3 A. That I don't know. I would refer you to the Department of  
4 the Navy.

5 Q. What percentage of ROTC officers start out through  
6 two-year colleges?

7 A. I don't know. I'd refer you to the Department of Navy.

8 Q. What about -- you're the Department of Defense, correct?

9 A. Correct.

10 Q. On officer accessions?

11 A. Generally, yes.

12 Q. So what about across all of the services? How many?

13 A. Sir, I don't know the specific number of two-year colleges  
14 in which we have partnerships with. I generally understand in  
15 work with the services that they have expanded that over the  
16 course of time. It is a relatively small portion of the  
17 overall recruiting and officer development programs.

18 Q. How much has it expanded?

19 A. That, I don't know.

20 Q. The next page talks about expanding ROTC hosts to more  
21 demographically diverse locations, correct?

22 A. Correct.

23 Q. How much progress has been made on this front in the last  
24 13 1/2 years?

25 A. That's an interesting question. Generally, our ability to



1 close or move an ROTC unit was statutorily constrained for a  
2 number of years. More recently, we received legislative relief  
3 that allows us to do this. But as a practical matter, closing  
4 or changing an ROTC unit is almost similar to a BRAC-like  
5 process. As you can imagine, there's significant regional and  
6 political interest in maintaining ROTC units where they have  
7 historically been.

8 Q. When was the statutory change made?

9 A. A few years ago.

10 Q. At what year?

11 A. I don't know specifically. I believe it may have been  
12 2022, but I would have to verify.

13 Q. What steps have been taken to increase or to expand ROTC  
14 hosts since the statute has changed?

15 A. It's challenging for us to expand beyond the current  
16 footprint. We currently have more ROTC units at more  
17 brick-and-mortar locations than we had during Vietnam. We have  
18 to then source those ROTC units with the appropriate officer  
19 leaders and staff. In a constrained budget environment, it is  
20 very difficult to be able to expand to other locations without  
21 potentially being able to close or consolidate others. And as  
22 I mentioned, that's a very difficult process to do, as we have  
23 found in practice.

24 Q. How many brick-and-mortar ROTC units are there?

25 A. I don't know a precise number.

1 Q. Do you know a general number?

2 A. I believe it's in this report.

3 Q. Do you know a general number?

4 A. Generally, we have thousands.

5 Q. And do you know how that compares to 10 years ago?

6 A. The overall number hasn't necessarily changed in a number  
7 of years precisely because of some of those restrictions and  
8 practical implications.

9 Q. On the next page there's a paragraph that talks about  
10 coordinating enlisted and officer recruiting.

11 Do you see that paragraph?

12 A. I do.

13 Q. The commission in 2011 recommended that the services  
14 explore developing formal processes for coordinating enlisted  
15 and officer recruiting, correct?

16 A. If I may, it would be helpful to know this -- what's on my  
17 screen is a magnified version of this. Can I ask for the  
18 page number.

19 Q. Yeah. This is page 81. It's the next page.

20 A. DX page 81?

21 Q. DX81.

22 A. Okay.

23 Q. Do you need me to restate the question?

24 A. Yes.

25 Q. Well, first of all, do you agree that one of the

1 recommendations of the commission was that the services explore  
2 developing formal processes for coordinating enlisted and  
3 officer recruiting?

4 A. Yes.

5 Q. What has the Department of Defense done to coordinate  
6 enlisted and officer recruiting in the last 13 years?

7 A. Well, generally there is a linkage between the two in the  
8 sense that, as recruiters are working with an enlisted  
9 candidate that they believe meets certain qualifications for  
10 officership through any one of the programs, there's an  
11 expectation that they will give a warm handoff to an officer  
12 recruiter such that they can continue the process.

13 Q. Well, this recommendation specifically refers to a formal  
14 coordination process between enlisted recruiters on one hand  
15 and Academy and ROTC programs on the other.

16 A. Yes, that's what I mentioned. They do the warm handoff to  
17 the officer recruiter, and the officer recruiter is an expert  
18 in the various different commissioning paths to include the  
19 academies and ROTC and OCS.

20 Q. What is the formal process?

21 A. As I mentioned, the expectation and the requirement is  
22 that if they develop a candidate that has those specific  
23 qualifications, then they give that candidate over to the  
24 officer recruiter.

25 Q. How has that policy changed since 2011?

1 A. In terms of making it stronger or...

2 Q. MDLC is recommending something different than what was  
3 happening before. They're recommending a formal coordination  
4 process. And so I'm asking how has that changed since 2011?

5 A. Generally it was a business practice. And now there's  
6 been more overt requirements for that warm handoff.

7 Q. Are there documents on that?

8 A. I would defer you to the Department of the Navy.

9 Q. You don't know?

10 A. I generally understand that the Navy has made it more  
11 clear to their recruiters what those requirements are.

12 Q. But do you know if there's a document?

13 A. I don't. But I'd rely upon the feedback from my  
14 Department of the Navy colleagues.

15 Q. The next recommendation from the MDLC was to improve  
16 congressional Academy nominations. Do you see that?

17 A. I do.

18 Q. And if you go over to the next page, it discusses concerns  
19 about making sure that the congressional Academy process was  
20 tapping into all potential sources for the officers, correct?

21 A. Correct.

22 Q. And we are aware that there has been some progress on this  
23 front, right?

24 A. Correct.

25 Q. The number of congressional nominations available to the

1 service academies has increased by 50 percent, correct?

2 A. Generally, yes.

3 Q. From 10 to 15?

4 A. Correct.

5 Q. Starting with this year's admissions process?

6 A. Correct.

7 Q. The next paragraph talks about developing a common  
8 application for service ROTC and Academy programs.

9 Do you see that?

10 A. I do.

11 Q. It notes that each service academy and ROTC programs  
12 required separate application in 2011?

13 A. Correct.

14 Q. And it recommended that there be a unified application to  
15 make it easier for candidates to apply to both ROTC and maybe  
16 multiple service academies?

17 A. Correct.

18 Q. I actually have some personal experience with this. That  
19 has not yet happened, has it?

20 A. No. That's something that we continue to work on as we  
21 have lessons learned from other universities that have used the  
22 common application. We have made more progress in the  
23 development of a single nomination portal as congressionally  
24 directed, and that's something that we are developing right now  
25 and should be in the field soon.

1 Q. So it's something that the Department of Defense has been  
2 working on since 2011?

3 A. Correct.

4 Q. How much longer is it going to take?

5 A. It likely will take a little bit more time, given that it  
6 takes time to develop those requirements. We're also required  
7 to put that form into the Federal Register for notice and  
8 comment.

9 We also then, as it's associated with IT and public -- or  
10 private information, we have to ensure certain safeguards.  
11 It's a matter that takes some time.

12 Q. Does it take 11 1/2 years?

13 A. Not necessarily. This has taken longer than I would think  
14 it necessarily needed to. But, again, what we were trying to  
15 do is to better understand what the lessons learned from the  
16 use of the common application was in other colleges and  
17 universities as well.

18 Q. Do you know how long the common app has been available to  
19 civilian universities?

20 A. For several years.

21 Q. For several years or longer than that?

22 A. I don't know the precise date.

23 Q. Was it available in 2011?

24 A. I don't know.

25 Q. The next recommendation from the Military Leadership

1 Diversity Commission was to closely examine the preparatory  
2 school admissions process and make required changes to ensure  
3 that accessions align with the needs of the military.

4 Do you see that paragraph?

5 A. I do.

6 Q. You're familiar with this recommendation, right?

7 A. Yes.

8 Q. So what has the -- what have the military preparatory  
9 academies done in response to the recommendation in this  
10 report?

11 A. Generally, they work very closely with the Academy  
12 admissions process to identify candidates that may benefit from  
13 an additional academic year and leadership and physical  
14 development year. And then they have also normalized some of  
15 the requirements and processes for a large percentage of those  
16 candidates to then flow into the service academies.

17 Q. Specifically on the next page, you can say that the  
18 "preparatory schools are an important source of racial and  
19 ethnic minority enrollment in the service academies. However,  
20 an examination of preparatory school records suggests that  
21 there is a large focus on developing athletes to enter the  
22 academies. Approximately 35 to 40 percent of the preparatory  
23 recent classes consisted of recruited athletes. It  
24 suggested" -- if you go to the last sentence -- "the commission  
25 recommends that DoD have the preparatory schools closely

1 examine their admissions processes and make any required  
2 changes to ensure accessions align with the needs of the future  
3 military workforce."

4 Correct?

5 A. Correct.

6 Q. What specifically have the academies done to follow up on  
7 this recommendation?

8 A. In the sense of we use those preparatory schools to help  
9 develop talent. I believe it's well understood that some  
10 aspect of that talent is athletic talent, which there is a  
11 greater degree of diversity in for some of those blue-chip  
12 athletes.

13 And so, again, just in the -- continue reviewing the  
14 programs and the instruction that we have at the preparatory  
15 schools, we continue to improve those programs. And to the  
16 extent that we need to evolve any training modules or  
17 instruction corresponding to a new dynamic of officership and  
18 military service, we do so.

19 Q. Has there been a formal report from the preparatory  
20 schools in response to the recommendation?

21 A. That, I don't know.

22 Q. Has there been any adjustment to the actual admissions  
23 process at the preparatory schools in response to this  
24 recommendation?

25 A. I would defer you generally to the Department of the Navy.



1 Q. The Navy is not the only prep school out there.

2 A. That's correct; so I would defer you to each of the  
3 military services.

4 Q. That's an important part of accessions into the officer  
5 corps, is it not?

6 A. The preparatory schools in particular?

7 Q. Yes.

8 A. Yes, they are.

9 Q. That's part of your expertise, right?

10 A. My general expertise is overseeing and working with the  
11 services for the management of the academies, not the  
12 day-to-day or the specific admissions practices at the  
13 preparatory schools.

14 Q. Even to the extent that the Military Leadership Diversity  
15 Commission thought that this could be an important way to  
16 increase diversity in the officer ranks?

17 A. And it generally has been.

18 Q. You would agree that there are many reasons that explain  
19 the reasons that promotion of minorities to general and flag  
20 officers lags behind White officers?

21 A. Yes, many of which we've discussed.

22 Q. Right. One of those reasons, you would agree with me, is  
23 that a large percentage of minority officers previously served  
24 in the enlisted ranks?

25 A. That's correct. I believe that generally more than

1 80 percent of current minority officers have some form of prior  
2 enlisted service.

3 Q. 80 percent of current officers?

4 A. Current minority officers.

5 Q. I just want to refresh -- well, I want to show you  
6 something.

7 You are familiar with this report, correct?

8 A. Correct.

9 Q. It's one of the reports that was included on your  
10 disclosures, correct?

11 A. Correct.

12 Q. If we go to page 10.

13 THE COURT: This is Defendants' Exhibit 150; is that  
14 correct?

15 MR. STRAWBRIDGE: That's correct. I'm sorry, Your  
16 Honor. I should have said that.

17 THE COURT: That's all right.

18 BY MR. STRAWBRIDGE:

19 Q. There's a box on this page that talks about prior enlisted  
20 status, correct?

21 A. Correct.

22 Q. The first bullet says, "84 percent of racial and ethnic  
23 minorities are more likely than White officers to be prior  
24 enlisted," right?

25 A. Correct.

1 Q. That's different than saying what percentage of them have  
2 prior enlisted service.

3 A. Yes, I would agree with you. That's the more precise  
4 statistic, yes.

5 Q. Right. Because the next bullet actually tells us that  
6 information, right?

7 A. Correct.

8 Q. That bullet tells us that 44 percent of Black or African  
9 American men and 37 percent of Black or African American women  
10 were enlisted before commissioning, correct?

11 A. Correct.

12 Q. And the last bullet point in this box notes that prior  
13 enlisted officers are 24 percent more likely to leave the  
14 military at the 20-year mark than officers without enlisted  
15 experience, correct?

16 A. Correct.

17 Q. And you would agree with me, right, there's nothing  
18 negative associated with prior enlisted service?

19 A. No, not at all. I think this just acknowledges the  
20 reality that, if they have prior enlisted service before  
21 they're commissioned as an officer, they're likely to reach  
22 that 20-year mark earlier than direct commissioning sources.  
23 And so they may elect to retire at that point.

24 Q. Right. Because they're further along in their military  
25 career when they become 01?

1 A. That's correct, yes.

2 Q. And I think as you testified on direct, when you get to  
3 these 10- or 20-year milestones, it's not uncommon for officers  
4 to pursue new opportunities, right?

5 A. That's correct.

6 Q. They may do so for family reasons, right?

7 A. Yes.

8 Q. They may do so because -- I think you testified about  
9 opportunities in the civilian workforce?

10 A. Correct.

11 Q. And then -- obviously, I come from a military family -- 20  
12 years is kind of a big deal when it comes to military service,  
13 correct?

14 A. It is. It's absolutely considered a very successful and  
15 complete career.

16 Q. It's also when you get full pension benefits?

17 A. That's correct.

18 Q. Do you know how many -- well, let me ask you this: Do you  
19 agree that officers from SEALs, aviation, and submarines are  
20 overrepresented at the flag level in the Navy?

21 A. Are overrepresented? Generally, again, as I mentioned  
22 before, the vast majority are unrestricted line community  
23 officers.

24 Q. My question is do those communities contribute a greater  
25 percentage of flag officers than they constitute in the officer

1 ranks generally?

2 A. I would have to go back and look at the splits amongst the  
3 various different unrestricted line communities.

4 Q. You don't know?

5 A. I don't know off the top of my head.

6 Q. All right. Do you happen to know how many African  
7 Americans chose to -- or how many African Americans accessed  
8 into the SEALs at the Naval Academy last year?

9 A. Well, since I was here and was listening in the audience  
10 to the prior witness and I did see the chart where it was  
11 indicated that there were none that entered in 2024.

12 Q. Do you know how many have accessed over the past 11 years?

13 A. I do not, not specifically.

14 Q. If I told you it was five, would that surprise you?

15 A. It would not.

16 Q. Do you know how many African Americans have accessed into  
17 the submarine surface over the last 11 years?

18 A. I do not, not specifically. But I would presume it to be  
19 small numbers.

20 Q. If I told you it was 47, would that surprise you?

21 A. It would not.

22 Q. You agree that there are a lot of reasons somebody may  
23 choose not to access into those communities, correct?

24 A. Correct.

25 Q. They're pretty physically demanding?

1 A. Yes.

2 Q. They require you to probably put yourself at greater risk  
3 in terms of your day-to-day job assignment?

4 A. Correct.

5 Q. They can be very difficult on families?

6 A. They can.

7 Q. They're very stressful occupations, correct?

8 A. I would say that all of our unrestricted line communities  
9 are operationally demanding and have a degree of stress on  
10 individual and family.

11 Q. You don't think the SEALs are a little bit more stressful  
12 than some other communities?

13 A. I do, but you were speaking broadly to submarines and  
14 aviation as well.

15 Q. Do you think aviation is more stressful than other  
16 communities?

17 A. I wouldn't characterize as aviation is more stressful than  
18 surface warfare, no.

19 Q. Do you think that -- you would agree with me that aviation  
20 has higher requirements for entry than surface warfare?

21 A. They have higher requirements for certain testing and then  
22 physical requirements, yes.

23 MR. STRAWBRIDGE: Thank you very much, Ms. Miller. I  
24 don't have any further questions.

25 THE COURT: Thank you, Mr. Strawbridge.

1 Redirect, Mr. Carmichael?

2 **MR. CARMICHAEL:** No, Your Honor.

3 **THE COURT:** Let me just -- I just have a few questions  
4 here, Ms. Miller.

5 Mr. Carmichael, if you could do me a favor. I've got my  
6 printout here of Defendants' Exhibit 204.

7 Either Mr. Spears or Mr. Pusterla, whoever can put them up  
8 for me as quickly as possible.

9 Defendants' Exhibit 204, I'd like it up on the screen, if  
10 possible.

11 **MR. STRAWBRIDGE:** It's on the screen.

12 **THE COURT:** There we go.

13 Looking here at, first of all, if we can, at page--  
14 looking at the matter of the 5-, 10-, and 15-year mark,  
15 starting with coming in the first gate in terms of 01s.

16 **THE WITNESS:** Yes, sir.

17 **THE COURT:** In terms of -- just so I'm clear, if I'm  
18 reading these charts correctly. Starting on page 11 in terms  
19 of the retention at officer first gate, there were --  
20 essentially is a 73 percent retention rate for African  
21 Americans, specifically Black officers, and 81 percent of  
22 Whites in 2001, correct?

23 **THE WITNESS:** Correct. Yes, sir.

24 **THE COURT:** And then going up to 2018, it improved to  
25 77 percent for Black officers and not quite as much -- it

1 didn't go up quite as much. It went up to 83 percent for White  
2 officers, correct?

3 **THE WITNESS:** Correct.

4 **THE COURT:** All right. And then looking next at -- I  
5 think it's page 17, in terms of the 10-year retention, the  
6 Black officers improved again from 44 percent in 2001 to  
7 47 percent in 2013, and the White officers improved from  
8 46 percent to 52 percent, correct?

9 **THE WITNESS:** Yes, sir. A small but measurable  
10 improvement.

11 **THE COURT:** So you have continued improvement in both  
12 areas in terms of retention?

13 **THE WITNESS:** Yes, sir. I think that this  
14 demonstrates, again, our relative success at improving  
15 retention of Naval Academy graduates over time.

16 **THE COURT:** And then in paragraph-- page-- hold on one  
17 second here.

18 Page 22, at the 15-year retention mark, the chart reflects  
19 as to the class of 2001 going up through the class of 2008 in  
20 terms of how you would measure this, it's a 36 percent  
21 retention rate for Black officers and the White officers  
22 actually fade to 32 percent, correct?

23 **THE WITNESS:** Yes, sir.

24 **THE COURT:** Is there any explanation or any thought  
25 you have as to why that dropped? I mean, the 15-year mark is



1 right there. Correct me if I'm wrong, Ms. Miller, but the  
2 15-year mark is extremely important both for active duty,  
3 reserve, or whatever. Active duty gets an immediate pension;  
4 reserve pension kicks in when they're 60.

5 But the 15-year mark is a pretty significant mark because  
6 you've got five years left to go. So it would seem to me that  
7 the 15-year mark is a fairly important mark because, once you  
8 get within that 5-year range, as I think is shown by the stats,  
9 people don't get out because they're going to get to 20 years  
10 regardless, any branch, active, reserve, or whatever.

11 What is the reason, you think, for the drop-off slightly  
12 as to White officers to 32 percent? Family considerations or  
13 what?

14 **THE WITNESS:** So I acknowledge that difference. I  
15 think that, generally, again, we see a large population go into  
16 those unrestricted line communities. And, again, particularly  
17 if you're going into submarines or aviation, even surface  
18 warfare, I think there's a lot of correlation and marketable  
19 skills that other organizations may be interested in.

20 And so I think that, you know, we have seen a strong pull  
21 in financial incentives to some of those other opportunities.  
22 And it could be that this population believes that that is a  
23 more advantageous career path for them to pursue for their  
24 families.

25 **THE COURT:** If I can pick up on that. That's why I

1 wanted to get to this side.

2 Also, it's a situation which hasn't been discussed much,  
3 but there's things or certain aspects of the military of up or  
4 out, is there not? If you're on a certain track, you get  
5 command positions and you're on your way. And, say, in the  
6 Army or the Marine Corps, you're stuck at lieutenant colonel  
7 and that's where you're going to stay. And there's a factor  
8 there for people getting out even if they don't go past 15  
9 years because they've pretty much hit their ceiling in terms of  
10 their personal career. Isn't that a fact?

11 **THE WITNESS:** That's correct, Your Honor. For a long  
12 time, the department had the up-or-out policies by which, if  
13 you failed to select for promotion for essentially two cycles  
14 in a row, then you're automatically required to  
15 administratively separate. We have since, actually, largely --

16 **THE COURT:** I was going to ask you that next, because  
17 that's no longer the case, is it?

18 **THE WITNESS:** That's correct, Your Honor. We --

19 **THE COURT:** When did that change?

20 **THE WITNESS:** Just a few years ago, actually.

21 **THE COURT:** I mean, literally within five -- as of  
22 five years ago, if you hit a certain mark, you were up or out.

23 **THE WITNESS:** That's correct.

24 **THE COURT:** I forget what the year was, because you  
25 weren't going to get promoted anymore, you weren't going to

1 have command, whether it's on the fleet, whether it's the  
2 Marine Corps or whatever. You were gone essentially, correct?

3 **THE WITNESS:** That is correct, sir.

4 If I may add?

5 **THE COURT:** Sure.

6 **THE WITNESS:** One of the reasons that we got rid of  
7 that policy generally over time is that it failed to really  
8 acknowledge kind of the human dynamic of what may be occurring  
9 that could contribute to a failure to select or promote.

10 **THE COURT:** Not to mention the legal effect of being  
11 denied a total pension at 20 years.

12 **THE WITNESS:** That's correct, yes, sir.

13 **THE COURT:** There was no pension at 15 years, and  
14 you're denying somebody a pension at 20.

15 **THE WITNESS:** Correct.

16 And so we found that there were certain individual factors  
17 that may have led to the inability to successfully complete,  
18 say, joint qualifications by a certain time frame. And that  
19 could then lead to being not selected in a promotion board.

20 And so we thought that, instead of having these rigid  
21 up-or-out policies, it was more appropriate to remove them and  
22 to look at every individual case to determine if there were any  
23 unique factors that perhaps led to that individual failing to  
24 select. And then we also wanted to provide more opportunities  
25 for rehabilitation, if you will, such that we could potentially

1 get them back on track.

2           **THE COURT:** Particularly, for example, in terms of the  
3 submarine corps, the three that have been listed several times  
4 by counsel on both sides, there were certain thresholds that  
5 had to be satisfied by submarine officer. Not everyone just  
6 got posted for an executive officer spot on a nuclear  
7 submarine, correct?

8           **THE WITNESS:** Yes, sir. It's an extremely competitive  
9 process to be selected for one of the few submarine leadership  
10 positions we have, either executive officer or commanding  
11 officer.

12           **THE COURT:** And I think it came up earlier -- not that  
13 you would know this, but it actually came up earlier, I think,  
14 last week. There used to be a time where people had to go  
15 through Admiral Rickover's desk and that was the -- I mean,  
16 literally get interviewed by Admiral Rickover himself. And if  
17 they made it, they made it; if they didn't, they didn't.

18           **THE WITNESS:** That is correct, sir. That practice --  
19 although, sadly, Admiral Rickover is no longer with us, that  
20 practice generally by nuclear reactor still exists. And  
21 officers who are either interested in pursuing nuclear  
22 communities or have been identified as having a strong affinity  
23 that way aligned to those communities are still required to do  
24 an individual interview with nuclear reactors.

25           **THE COURT:** And then, if we can, going to the

1 all-important, I think, page 28 here with respect to the  
2 20-year mark where you make the 20 years and you've vested,  
3 looking at that chart in terms of the racial groups and  
4 specifically as to Black officers and then White officers, just  
5 so I make sure that I understand this figure here, is that --  
6 is that 55 Black officers in the year 2001 reached that mark;  
7 is that right?

8           **THE WITNESS:** Yes, sir.

9           **THE COURT:** And then 1,316 White officers reached that  
10 mark in 2001, correct?

11           **THE WITNESS:** Yes, sir.

12           **THE COURT:** And then in 2023, the number of White  
13 officers increased by one, 1,316 to 1,317.

14           **THE WITNESS:** Correct. Yes, sir.

15           **THE COURT:** So there's an increase of one White  
16 officer over those 22 years. As to Black officers, I would  
17 note that 55 officers in 2001 increased as of last year, 2023,  
18 was up to 91.

19           **THE WITNESS:** Yes, sir.

20           If I may elaborate?

21           **THE COURT:** An 80 percent increase by Blacks and  
22 literally no increase by Whites in terms of this 20-year mark,  
23 correct?

24           **THE WITNESS:** Yes, sir.

25           May I elaborate?

1           **THE COURT:** Yes. That's why I'm asking.

2           **THE WITNESS:** If you observe, sir, you can also see  
3 corresponding increases by other racial categories. And as you  
4 may recall, we talked about the closed-loop system. So it's  
5 statutorily controlled how many officers we can have.

6           So it reasons that if we've seen more significant  
7 increases in categories other than White, then White is likely  
8 going to remain relatively flat or may go down.

9           **THE COURT:** And that is why if you actually -- like I  
10 meant to mention, the Asian American officers, 2001, the figure  
11 was 9, and then that increased to 48 in 2023.

12           **THE WITNESS:** Yes, sir.

13           **THE COURT:** So there has been an improvement in  
14 diversity reflected by that chart, correct?

15           **THE WITNESS:** Correct. Yes, sir.

16           **THE COURT:** I know it's taken a long time, but there  
17 has been improvement?

18           **THE WITNESS:** Yes, sir.

19           If I may add?

20           **THE COURT:** Absolutely.

21           **THE WITNESS:** Yes, sir, we agree. And that's what we  
22 believe these statistics reflect is that there is small but  
23 measurable improvement over the course of time. It does take a  
24 long time, but I think what's important to recognize is this is  
25 with the current limited consideration of race and ethnicity

1 during that admissions process, and that if we were not to have  
2 the ability to potentially consider that in appropriate  
3 situations, then it reasons that we may see that corresponding  
4 difference.

5 And I think that what is important in terms of context to  
6 understand is that, while the academies in this situation are  
7 being juxtaposed against universities like Harvard or UNC or  
8 MIT, at its heart our service academies are quintessentially a  
9 military organization that also happen to be a four-year  
10 degree-granting institution.

11 Where they may share certain similarities with those other  
12 universities such as robust sports programs, we have those  
13 programs not because we seek to be the SEC or the ACC but  
14 because we have inevitably determined that having programs such  
15 as strong sports programs is directly contributable to military  
16 needs and requirements.

17 And so ultimately there's a distinct difference in the  
18 academies than there are in those civilian institutions  
19 because, at its core, its sole purpose is to develop and  
20 provide future officers to the Navy and ultimately the  
21 Department of Defense.

22 Its mission, its purpose is uniquely different than that  
23 of those other institutions, all driven by those military  
24 necessity and national defense priorities.

25 **THE COURT:** Just one question to follow up on that.

1 There was a period of time, was there not, when ROTC programs  
2 were actually chased off of campuses?

3 THE WITNESS: Yes, sir, that is very true.

4 THE COURT: Does Harvard still have an ROTC program?

5 THE WITNESS: It does, yes.

6 THE COURT: When did it come back?

7 THE WITNESS: Sir, I'd have to go back and look. It  
8 was only a few years ago.

9 THE COURT: It was a long time Harvard didn't have an  
10 ROTC program.

11 THE WITNESS: That's correct. We were not welcomed at  
12 certain institutions.

13 THE COURT: I think it might have been literally every  
14 one of the eight Ivy League schools chased off the ROTC  
15 programs for many years, did they not?

16 THE WITNESS: Sir, I would need to go back and verify.  
17 I believe there are some that have maintained a unit in some  
18 way, shape, or form.

19 THE COURT: But Harvard just came back. It's not like  
20 Harvard has had an ROTC program for a long period of time?

21 THE WITNESS: Not necessarily.

22 THE COURT: So just for the record, I wouldn't call  
23 Harvard having been a very active participate in the ROTC  
24 program over the course of the last 50 years. Correct?

25 THE WITNESS: Yes, sir.



1           **THE COURT:** Unlike University of North Carolina, which  
2 has had an active ROTC program, including Navy ROTC, for many  
3 years, correct?

4           **THE WITNESS:** Correct.

5           **THE COURT:** I believe that actually stood the test of  
6 time even during times when other campuses were chasing off the  
7 ROTC program.

8           **THE WITNESS:** Yes, sir. We do worry even today with  
9 some of the strife that we see at universities and schools.  
10 There was a school not long -- just a few weeks ago where the  
11 ROTC unit was actually -- it was graffitied with antimilitary  
12 sentiments. And so that is something that we continue to focus  
13 on and are concerned about today.

14           **THE COURT:** And then lastly, my question is looking at  
15 page 29 of the Defendant's Exhibit 204. In terms of the  
16 percentage representation of the racial groups, following up  
17 with what we discussed a few minutes ago, the Asian figure has  
18 gone from 0.6 percent to 31 percent, correct?

19           **THE WITNESS:** Yes, sir.

20           **THE COURT:** 22 years later.

21           **THE WITNESS:** Yes.

22           **THE COURT:** Black percentage has gone from  
23 approximately 4 percent, has gone up to approximately  
24 6 percent.

25           **THE WITNESS:** Yes, sir.

1           **THE COURT:** And then the White percentage, consistent  
2 with what you said before, was at, like, 94 percent, now it's,  
3 like, 85 or 86 percent.

4           **THE WITNESS:** Correct.

5           **THE COURT:** Same progress. It's been a long slide,  
6 but there has been progress, correct?

7           **THE WITNESS:** Yes, sir. Slow but measurable and very  
8 important.

9           **THE COURT:** Thank you.

10          Mr. Carmichael, any further direct from your point after  
11 the questions of the Court?

12          **MR. CARMICHAEL:** No, Your Honor. I think you might  
13 have misspoke on the 2023 for Asian. You said 31 percent.  
14 It's 3.1.

15          **THE COURT:** Thank you on that. I meant to say 3.1.

16          Mr. Strawbridge, any further cross from your point of  
17 view?

18          **MR. STRAWBRIDGE:** Just a couple of follow-up  
19 questions.

20          **THE COURT:** Sure.

21                               **RECROSS EXAMINATION**

22 **BY MR. STRAWBRIDGE:**

23                               - - -

24 **Q.** You agree with me that both the charts we were just  
25 looking at on pages 28 and 29 only show United States Naval

1 Academy graduates?

2 A. Correct.

3 Q. And you agree with me that, again, you are unable to say  
4 what percentage, if any, these figures are attributable to the  
5 use of race at the Academy?

6 A. Not directly, but it reasons that it could have a factor.

7 Q. If you don't know how much race is used at the Naval  
8 Academy, how can you testify about that?

9 A. Because I generally appreciate that having the ability to  
10 consider that may be a positive factor in this instance.

11 Q. It may be, but you don't know, right?

12 A. But it may be.

13 Q. Do you know?

14 A. Not precisely, but I --

15 Q. Can you quantify it --

16 THE COURT: Excuse me.

17 MR. STRAWBRIDGE: Sorry.

18 THE COURT: We've had a very good trial here for eight  
19 or nine days. No lawyer has been cutting off witnesses. But  
20 stop cutting off the witness and let her answer the question,  
21 Mr. Strawbridge.

22 MR. STRAWBRIDGE: I apologize, Your Honor.

23 THE COURT: Your apology is accepted. Ask the  
24 question; allow the witness to answer.

25 MR. STRAWBRIDGE: She can finish the answer.

1           **THE COURT:** You may answer.

2           **THE WITNESS:** If you ask the question.

3 **BY MR. STRAWBRIDGE:**

4 **Q.** Yes. Can you quantify it at all?

5 **A.** Not specifically, no.

6           **MR. STRAWBRIDGE:** Thank you.

7           **THE COURT:** Thank you very much.

8           Thank you very much, Ms. Miller, for your service both  
9 military and then Department of Defense. Thank you very much.

10          **THE WITNESS:** And yours, sir. Thank you.

11          **THE COURT:** Mr. Gardner.

12          **MR. GARDNER:** I was just going to say, with that, the  
13 government rests its case.

14          **THE COURT:** Hold on one minute here.

15          You may step down, Ms. Miller. Thank you.

16          All right. Just going over the chart here. There's one  
17 thing that I would note. I think we all agree that the next  
18 step here is going to be that we're going to make sure we've  
19 got all the exhibits in evidence. And, Counsel, that would  
20 include, along with the exhibits, the demonstrative exhibits on  
21 both sides. I think it would be very helpful. The slides and  
22 the charts are helpful on both sides; so I want them in  
23 evidence. I've looked at them. They're fine.

24          The one thing that, just from a procedural point of view,  
25 I did note that, according to the docket sheet -- and it just

1 may be the error of the clerk's office or whatever -- but with  
2 respect to the filing of this lawsuit, we're literally  
3 approaching the first anniversary of the filing of the lawsuit.

4 And I see Mr. Strawbridge smiling and Mr. Mortara and all  
5 of us. We actually got right here in a year. That goes to  
6 show it can be done. And I want to note how hard you all have  
7 worked on this matter and the good work all the lawyers have  
8 done on both sides.

9 But, essentially, with respect to the motion for  
10 preliminary injunction attendant to the filing of the lawsuit,  
11 the response was filed by the defendants on December the 1st,  
12 and then ultimately we had a hearing, and then I issued by  
13 memorandum order on December 20th, denying preliminary  
14 injunction. And we set this in on the schedule.

15 What I have noted here is I gather there was an actual  
16 answer filed by the defense, and I'm trying to clarify that.  
17 And I guess I just -- as I was looking through all this and  
18 crossing t's and dotting i's, there's no actual answer that was  
19 filed. I just am trying to make sure the clerk's office didn't  
20 inadvertently miss filing an answer.

21 **MR. GARDNER:** The clerk's office did everything  
22 perfectly. We reached an agreement with the other side, and  
23 then we requested through you the ability to waive the answer.  
24 And you approved that when we did our scheduling order.

25 **THE COURT:** What I'm trying to make sure from

1 Mr. Strawbridge and Mr. Mortara, as well as you, Mr. Gardner,  
2 is the district judges here in the Fourth Circuit, with no  
3 disrespect to my friend and colleagues down in Richmond, have  
4 increasingly noted we've had more than a few reversals and  
5 remands; and we're wondering if Judge Remand is on duty down in  
6 Richmond. I mean, really, we've all noted it.

7 And it occurred to me the thought of, after all this work,  
8 something being remanded back on a procedural default in terms  
9 of an answer not technically being filed -- and I'm just trying  
10 to make sure that t's been crossed and that i dotted.

11 Mr. Strawbridge, from your point of view -- clearly, the  
12 defense have denied your request, and there's been an answer.  
13 We've had litigation. We're on the eve of closing argument.  
14 But I'm wondering what your position is on this.

15 **MR. STRAWBRIDGE:** Mr. Gardner is absolutely right. We  
16 agreed to waive the necessity for an answer because the case  
17 needed to get going. We had a very aggressive schedule. We've  
18 worked very cooperatively to get where we are today.

19 **THE COURT:** Absolutely.

20 **MR. STRAWBRIDGE:** So, yes, I can put on the record  
21 that we did not demand and we are fine with basically treating  
22 their filings as a general denial.

23 **THE COURT:** There's no procedural waiver from the  
24 point of view of the plaintiff on this?

25 **MR. STRAWBRIDGE:** Correct.

1 THE COURT: You agree with that, for the record?

2 MR. STRAWBRIDGE: Yes.

3 THE COURT: You understand, Mr. Gardner?

4 MR. GARDNER: Of course, Your Honor.

5 THE COURT: So everyone agrees where we are now is at  
6 the stage of verifying the -- I mean, technically in many  
7 situations with these cases, we reach the stage of possible  
8 summary judgment under Rule 56 or whatever. We've gone past  
9 all of that. We've had a nine-day trial, and we've marked  
10 exhibits. Exhibits are in evidence. Findings of fact,  
11 conclusions of law are going to be summarized tomorrow in  
12 closing argument. And I've set a date of next Wednesday for  
13 each side to submit their proposed findings of fact,  
14 conclusions of law. And then I'll take it under advisement.  
15 I'm going to make every effort to -- I'm not sure what the time  
16 frame will be, but it's going to be -- it isn't going to be a  
17 week; that's for sure. I'm going to make every effort to do  
18 this within the next six weeks to two months, which I think  
19 will be, again, at a faster pace than was done in the other  
20 cases.

21 I see Mr. Mortara nodding in agreement with me on that.

22 My point is that's where we are here now procedurally,  
23 that we're going to -- before we finish this afternoon, my  
24 suggestion is that we start the process, which always causes  
25 the younger lawyers to scurry more than the older lawyers. But

1 the point is is that we have to just have people cross t's and  
2 dot i's and go over what the exhibits are.

3 My thought is I'll go off the bench. I'll be around here  
4 for a while, until 5:00 -- I've got a function with my wife at  
5 5:30 -- in case there's any dispute that comes up. Sometimes  
6 there are disputes that comes up on the matter of exhibits in  
7 evidence, not in evidence, or whatever. And we can address  
8 those this afternoon or we can certainly, if they come up -- I  
9 hope they don't -- I'll address it before we have closing  
10 argument tomorrow just to cross those t's and dot those i's.

11 And then we proceed to closing argument -- plaintiff,  
12 defendant, rebuttal by the plaintiff. The plaintiff has the  
13 burden here and plaintiff gets rebuttal. That's normally the  
14 way it works in a bench trial, but this is a declaratory  
15 judgment action. I'm just going to go step by step on this.

16 Yes, Mr. Gardner.

17 **MR. GARDNER:** I was going to say the good news is  
18 we've been working very cooperatively with the plaintiff, and  
19 Mr. Strawbridge can correct me if I'm wrong, but I believe we  
20 have complete agreement as to what exhibits are in evidence.

21 **THE COURT:** All right. That's fine.

22 If I'm mistaken about this in terms of -- pulling back in  
23 terms of the basic, you know, principles in terms of Rule 52  
24 motions or whatever, essentially, the plaintiff, normally in a  
25 bench trial in a civil case, has the right to have rebuttal



1 argument.

2 Essentially correct, Mr. Gardner?

3 **MR. GARDNER:** I defer to Your Honor. I've had it done  
4 both ways, where both sides get one shot, sometimes the  
5 plaintiff --

6 **THE COURT:** I don't know -- I should know. I don't  
7 know how it was handled in North Carolina or Massachusetts. I  
8 think in one of those cases, it was just two closing arguments,  
9 but then another, I just couldn't tell.

10 Mr. Mortara.

11 **MR. MORTARA:** In Boston we did a rebuttal closing, and  
12 then we had another closing after proposed findings, which was  
13 incredibly redundant and just served as a retread of an  
14 experience that we all wished to at least view fondly and  
15 forget the bad parts.

16 What I will say is we've agreed with -- Your Honor will  
17 remember from my opening statement, it is our belief the burden  
18 lays with the defense.

19 **THE COURT:** Yes.

20 **MR. MORTARA:** We've agreed with the defense, in an  
21 exchange for an agreement that it be one hour each, that we  
22 will forgo our rebuttal.

23 **THE COURT:** That's fine. You sort of anticipated what  
24 I was going to anticipate because, if race is a factor, then it  
25 flips over to the burden in terms of strict scrutiny.

1 Another thing I thought of today when I was driving in in  
2 terms of the actual answer, I thought, well, really, the burden  
3 has gone over here in terms of the strict scrutiny analysis and  
4 whether it's been narrowly tailored.

5 So then I was thinking maybe the defense gets the  
6 response. And I'm thinking maybe I'll just clarify it with all  
7 of you.

8 You each have -- by the way, I don't care about -- you're  
9 not going to be limited to an hour; you can have as long as you  
10 want. If you both agree on an hour, that's fine.

11 The plaintiff will proceed with closing argument; then the  
12 defendant will proceed with closing argument. That's what  
13 we're going to do.

14 **MR. MORTARA:** Yes. And, Your Honor --

15 **THE COURT:** And I don't see any argument being after  
16 submission for a proposed findings of fact, conclusions of law.  
17 The bowling ball then is in my lap, and it's my turn now.

18 I see my law clerk is shriveling over here.

19 (Laughter.)

20 **THE COURT:** It's my turn and their turn to then deal  
21 with it.

22 We're all laughing again at this point.

23 But, Mr. Strawbridge, I didn't mean to lean on you so hard  
24 on the cross of the witness. I wanted to make sure my clerk  
25 was still awake up here. That's why --

1 MR. STRAWBRIDGE: I appreciate -- I do apologize.

2 THE COURT: That's all right. That's fine.

3 MR. MORTARA: Your Honor, I will say, I've been up, a  
4 little animated once or twice. The best part about being here  
5 is you are quick to correct and quick to forgive.

6 THE COURT: Very short memory. Very short memory. My  
7 wife would accuse me of that and many other domains as well.  
8 But that's another matter.

9 So that's where we're going to be. Why don't we make  
10 sure -- I'm not saying people have to stay late. I just think  
11 as long as you don't have any disputes about the exhibits, you  
12 clear out. It makes it much easier for the clerk and for my  
13 law clerks. But by the same token, if there are any skirmishes  
14 over it, I'll be around till 5:00.

15 And then let Ms. Hudson know, my senior clerk, with  
16 respect to, if there's things that come up in the evening,  
17 we'll just address it in the morning, and then we'll be ready  
18 to go.

19 Now, my intelligence sources that I mentioned as to  
20 Ms. Herndon in terms of activity around the courthouse, I've  
21 got other intelligence sources that are out that perhaps we  
22 might not want to start right at 10:00 tomorrow because it  
23 might be raining tomorrow.

24 But without breaching things, should -- Ms. Herndon,  
25 should -- this is delegation. The military people here will

1 tell you that the NCOs run the Navy and run the Army. Well,  
2 this is the NCO over here. She runs the show.

3 Ms. Herndon, can we start at 10:00 tomorrow or should we  
4 start at 10:30?

5 **THE CLERK:** 10:00 is fine.

6 **THE COURT:** 10:00 is fine. We're going on your  
7 intelligence.

8 If for some reason people find -- we're laughing here  
9 again -- if people find themselves out in the rain over a  
10 drill, they'll address their ire appropriately when they get  
11 into the courtroom.

12 Do you think, Jakiba, we're good for 10:00?

13 **THE CLERK:** I haven't heard anything, but if I do,  
14 you'll be first to know.

15 **THE COURT:** Just in terms of the secretive fire drills  
16 that we're well prepared for here after a while. But that's  
17 another matter.

18 Is there anything else this evening from the point of view  
19 of the plaintiff?

20 **MR. MORTARA:** Nothing from plaintiff, Your Honor.

21 **THE COURT:** Anything else from the point of view of  
22 the defense?

23 **MR. GARDNER:** Nothing from the government, Your Honor.

24 **THE COURT:** Thank you all very much. With that, we  
25 will reconvene tomorrow at 10:00. Thank you.

1           **THE CLERK:** All rise. This Honorable Court is now  
2 recessed for the evening.

3           (Court adjourned at 3:50 p.m.)  
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CERTIFICATE OF OFFICIAL REPORTER

I, Ronda J. Thomas, Registered Merit Reporter, Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 25th day of September 2024.

*Ronda J. Thomas*

Ronda J. Thomas, RMR, CRR  
Federal Official Reporter

<p>BY MR. CARMICHAEL: [23] 28/10 35/22 36/3 39/7 49/8 73/6 79/19 93/18 104/25 135/2 146/12</p> <p>MR. GARDNER: [6] 148/12 149/21 151/4 152/17 153/3 156/23</p> <p>MR. MORTARA: [5] 153/11 153/20 154/14 155/3 156/20</p> <p>MR. STRAWBRIDGE: [17] 28/13 28/16 35/25 105/3 130/15 134/23 135/11 146/18 147/17 147/22 147/25 148/6 150/15 150/20 150/25 151/2 155/1</p> <p>MS. GARGEYA: [7] 4/7 4/11 4/24 16/18 26/16 27/16 27/25</p> <p>MS. WYRICK: [3] 27/2 27/21 28/23</p> <p>THE CLERK: [12] 3/13 4/14 4/16 4/20 28/25 29/3 29/7 79/12 79/17 156/5 156/13 157/1</p> <p>THE COURT: [101] 3/2 3/14 4/8 4/13 4/21 16/20 26/20 27/4 27/17 27/23 28/1 28/7 28/12 28/15 28/21 28/24 29/8 35/24 36/1 79/3 79/15 80/9 80/15 80/17 80/20 93/20 105/1 105/5 130/13 130/17 134/25 135/3 135/12 135/17 135/24 136/4 136/11 136/16 136/24 137/25 138/16 138/19 138/21 138/24 139/5 139/10 139/13 140/2 140/12 140/25 141/9 141/12 141/15 141/21 142/1 142/9 142/13 142/16 142/20 143/25 144/4 144/6 144/9 144/13 144/19 144/22 145/1 145/5 145/14 145/20 145/22 146/1 146/5 146/9 146/15 146/20 147/16 147/18 147/23 148/1 148/7 148/11 148/14 149/25 150/19 150/23 151/1 151/3 151/5 152/21 153/6 153/19 153/23 154/15 154/20 155/2 155/6 156/6 156/15 156/21 156/24</p> <p>THE WITNESS: [49] 4/18 28/6 29/5 80/12 80/16 80/18 135/16 135/23 136/3 136/9 136/13 136/23 137/14 138/11 138/18 138/20 138/23 139/3 139/6 139/12 139/15 140/8 140/18 141/8 141/11 141/14 141/19 141/24 142/2 142/12 142/15 142/18 142/21 144/3 144/5 144/7 144/11 144/16 144/21 144/25 145/4 145/8 145/19 145/21 145/25 146/4 146/7 148/2 148/10</p>	<p>10:00 [6] 3/16 155/22 156/3 156/6 156/12 156/25</p> <p>10:00 [1] 156/4</p> <p>10:30 [1] 156/4</p> <p>10s [1] 43/12</p> <p>11 [7] 26/3 60/23 89/13 126/12 133/12 133/17 135/18</p> <p>11:00 [1] 3/17</p> <p>11:05 [2] 1/7 3/1</p> <p>12 [6] 41/4 41/5 62/3 62/4 68/23 68/24</p> <p>12:48 [1] 79/14</p> <p>13 [4] 65/25 117/20 119/19 123/6</p> <p>13 1/2 [1] 120/24</p> <p>1322.22 [1] 36/8</p> <p>135 [1] 2/9</p> <p>14 [1] 62/12</p> <p>146 [1] 2/10</p> <p>15 [10] 46/10 65/8 65/11 65/13 66/8 66/8 66/9 125/3 138/8 139/13</p> <p>15-year [11] 65/10 66/3 66/10 66/17 69/4 135/14 136/18 136/25 137/2 137/5 137/7</p> <p>150 [1] 130/13</p> <p>17 [4] 63/13 77/23 101/25 136/5</p> <p>18 [5] 64/15 72/9 72/10 90/11 90/14</p> <p>19 [1] 115/1</p> <p>1997 [1] 5/16</p> <p>1:23-cv-2699-RDB [1] 1/5</p> <p>1st [1] 149/11</p>	<p>33 [1] 72/11</p> <p>35 [3] 48/24 72/19 127/22</p> <p>36 [1] 136/20</p> <p>36 percent [1] 136/20</p> <p>37 percent [1] 131/9</p> <p>3:50 [1] 157/3</p> <p>3a [5] 36/18 36/19 36/23 36/25 38/6</p> <p>3b [2] 37/6 38/6</p>
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